

No. 12046

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

LEE ARENAS,

Appellant,

vs.

JOHN W. PRESTON, OLIVER O. CLARK and
DAVID D. SALLEE,

Appellees.

UNITED STATES OF AMERICA and LEE ARENAS,
Appellants,

vs.

JOHN W. PRESTON, OLIVER O. CLARK and
DAVID D. SALLEE,

Appellees.

TRANSCRIPT OF RECORD

Appeals From the District Court of the United States
for the Southern District of California,
Central Division

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

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San Francisco 5, Calif.

For Appellant United States of America:

JAMES M. CARTER

United States Attorney

IRL D. BRETT

Special Assistant to the Attorney General

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Los Angeles 12, Calif.

For Appellees:

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OLIVER O. CLARK

DAVID D. SALLEE

712 Rowan Building

458 South Spring Street

Los Angeles 13, Calif. [1*]

In the District Court of the United States
Southern District of California
Central Division

No. 1321 O'C—Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA.

Defendant.

PETITION FOR SUPPLEMENTAL DECREE FOR
ATTORNEYS' FEES AND EXPENSES AD-
VANCED, FOR SALE OF PROPERTY AND
FOR APPOINTMENT OF RECEIVER

The petition of John W. Preston, Oliver O. Clark and David D. Sallee, respectfully alleges:

I.

That the above entitled action was begun in this Court on the 24th day of December, 1940, and this Court rendered judgment therein on the 14th day of May, 1945, adjudging that plaintiff was entitled to trust patents to the lands allotted in 1923 and reallocated in 1927 to Lee Arenas, Guadalupe Arenas, Francisco Arenas and Simon Arenas. That the United States of America appealed from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and said Court on the 12th day of December, 1946, affirmed that portion of said judgment adjudging that plaintiff was entitled to trust patents to the lands allotted to Lee Arenas and Guadalupe Arenas, but decreed that plaintiff was not entitled to [2] trust patents to the lands allotted to Francisco Arenas and Simon Arenas. That thereafter plaintiff filed a petition

for a writ of certiorari to said Circuit Court of Appeals in the Supreme Court of the United States, which was denied by said Court on the 9th day of June, 1947. That the judgment of this Court, as modified by the Circuit Court of Appeals, is final.

II.

That petitioners acted as attorneys for plaintiff at his request throughout the litigation. That originally their employment was evidenced by a written contract approved by this Court and dated November 20, 1940. That said contract was later, to wit, on the 1st day of February, 1945, superseded by a new contract with petitioners, which provided as follows:

“I hereby agree to pay my said attorneys upon a quantum meruit basis for services rendered and to advance or reimburse any and all expenses incurred in my behalf or in behalf of any and all members of my family.”

III.

That the plaintiff, Lee Arenas, was at all times mentioned herein, and is now, a duly enrolled and recognized member of the Agua Caliente or Palm Springs Band of Mission Indians and has at all such times resided upon the Reservation of said Band of Indians in the County of Riverside, State of California.

IV.

That by the final judgment in this action, as modified by the United States Circuit Court of Appeals for the Ninth Circuit, it was decreed that plaintiff was, and is, entitled to trust patents to the lands allotted in 1927 to Lee Arenas and to Guadalupe Arenas, his wife, which

lands are more particularly described as follows. to wit: [3]

Lands Allotted to Lee Arenas:

Parcel (a) Homesite: Lot 46, Section 14, Township 4 South, Range 4 East, S. B. B. & M., comprising two (2) acres;

Parcel (b) Irrigated: Tract No. 39, Section 26, Township 4 South, Range 4 East, S. B. B. & M., comprising five (5) acres;

Parcel (C) Desert: $E\frac{1}{2}$ $SW\frac{1}{4}$ $NW\frac{1}{4}$ and $SE\frac{1}{4}$ $NW\frac{1}{4}$ $NW\frac{1}{4}$ and $SW\frac{1}{4}$ $NE\frac{1}{4}$ $NW\frac{1}{4}$ all in Section 26, Township 4 South, Range 4 East, S. B. B. & M., comprising forty (40) acres.

Lands Allotted to Guadalupe Arenas:

Parcel (a) Homesite: Lot 47, Section 14, Township 4 South, Range 4 East, S. B. B. & M., comprising two (2) acres; Parcel (b) Irrigated: Tract No. 40, Section 26, Township 4 South, Range 4 East, S. B. B. & M., comprising five (5) acres;

Parcel (C) Desert: $SE\frac{1}{4}$ $NW\frac{1}{4}$ all in Section 26, Township 4 South, Range 4 East, S. B. B. & M., comprising forty (40) acres.

V.

That the applications for allotment, and the selections of lands for allotment, made by Lee Arenas and Guadalupe Arenas, and the proceedings had thereon in 1927, including the certification and submission of the allotment schedule to the Secretary of the Interior by H. E. Wadsworth, the United States Special Allotting Agent at Large for the Mission Indian Reservations in California, and the certificates issued by said Special Allotting Agent to Lee Arenas and Guadalupe Arenas, were de-

clared and adjudged by this Court to be in all respects legal and binding against the United States in the judgment rendered by this Court on the 14th day of May, 1945, and by the United States Circuit Court of Appeals for the Ninth Circuit, except as modified by the decree of said [4] Circuit Court of Appeals.

VI.

That by the decree of the United States Circuit Court of Appeals for the Ninth Circuit in this action, the date upon which the period of restriction on alienation shall begin to run, as prescribed by Section 5 of the Act of January 12, 1891 (26 Stat. L. 712), is the 9th day of May, 1927.

VII.

That all of the lands described in Paragraph IV hereof lie within or near the City of Palm Springs, County of Riverside, State of California, and taken together the said lands have a present day value in excess of One Million Dollars (\$1,000,000.00). That portions of said lands, at the present time, are producing rentals of the value of about Seven Thousand Five Hundred Dollars (\$7,500.00) per annum; but if said lands are properly managed and handled, they should produce in rentals a much larger sum per annum, to wit, a sum in excess of Twenty Thousand Dollars (\$20,000.00).

VIII.

That petitioners have not been paid, nor have they received any sum whatsoever for their services in this action which have extended over a period of more than six years. That petitioners have advanced for necessary ex-

penses in prosecuting this action the sum of Two Hundred Fifty-eight Dollars and Sixty-seven Cents (\$258.67), no part of which sum has been paid or refunded to them.

IX.

That the following is a brief description and recital of the work done and performed by the petitioners in this case, to wit:

The complaint was prepared by petitioners and filed in this action on the 24th day of December, 1940. Thereafter three amended [5] complaints were prepared and filed by petitioners. The pleadings presented extraordinary difficulties, arising out of unique and unusual legal questions and factual situations.

Two trials of the action were had in this Court; two appeals were conducted from the judgments of this Court to the Circuit Court of Appeals for the Ninth Circuit, both appeals being elaborately briefed by petitioners; two petitions for rehearing were prepared and filed by petitioners; two petitions for writs of certiorari to the Circuit Court of Appeals were prepared and filed in the Supreme Court of the United States, with supporting briefs and records, the first of which petitions was granted and the cause was thereupon rebriefed, heard and argued orally in the Supreme Court of the United States, resulting in a reversal of the first judgment herein; and the second petition for certiorari was denied by the Supreme Court on the 9th day of June, 1947.

That a more particular and chronological statement of the steps taken, and of the work done by petitioners, in this cause is as follows:

The original complaint was filed on December 24, 1940;

First Amended Complaint was filed;

Second Amended Complaint, 48 pages, filed October 27, 1941;

Motion of defendant, United States of America, to dismiss and motion for summary judgment filed November 29, 1941; the latter motion was heard on January 12, 1942 and was postponed until January 26, 1942, and was granted on March 6, 1942;

Plaintiff's Notice of Appeal from said judgment to the Circuit Court of Appeals for the Ninth Circuit was filed June 4, 1942;

The Record on Appeal was filed August 21, 1942;

Plaintiff's Opening Brief, 45 pages, and appendix thereto, 6 pages, filed November 16, 1942; [6]

Brief for United States of America filed December 11, 1942;

Plaintiff's Reply Brief, 7 pages, filed January 26, 1943;

Judgment of District Court affirmed June 30, 1943;

Petition for Rehearing filed July 23, 1943; Rehearing denied August 4, 1943;

Petition for Writ of Certiorari and supporting brief, 23 pages, with supporting record, 78 pages, filed in Supreme Court of the United States October 29, 1943;

Writ of Certiorari granted by Supreme Court December 20, 1943;

Supplemental Brief of plaintiff, 25 pages, filed February 25, 1944; cause argued by two of plaintiff's counsel in Supreme Court on March 6 and 7, 1944;

Order of Supreme Court reversing judgment below entered May 22, 1944;

Thereafter, on January 9, 1945, petitioners filed a third amended complaint for plaintiff to conform to the opinion of the Supreme Court of the United States;

The cause was prepared for trial, and the trial was had upon the issues raised by the third amended complaint and the answer thereto on January 30 and 31, 1945;

The evidence and exhibits introduced comprised approximately 600 printed pages, the exhibits alone being more than 200 pages;

Judgment for plaintiff was rendered by this Court on May 14, 1945, based upon elaborate findings of fact and conclusions of law, prepared by petitioners, consisting of 29 pages;

The United States of America made many objections to the findings, and also made motions to set them aside, requiring attendance and argument thereof by petitioners in open Court;

The United States of America appealed from the judgment to the Circuit Court of Appeals for the Ninth Circuit on August 8, 1945;

Both parties filed elaborate briefs in said Court, [7] plaintiff's brief containing 39 pages; and thereafter petitioners argued the case orally in said Court;

On December 12, 1946, the Circuit Court of Appeals made and entered its decree, affirming said judgment in part and reversing it in part, the effect of which decision was to give plaintiff the lands al-

lotted in 1927 to him and to his wife, Guadalupe Arenas, consisting of 94 acres more or less, and denying plaintiff the lands allotted to Francisco Arenas and Simon Arenas, father and brother, respectively, of plaintiff;

Petitioners thereupon prepared and filed in said Court on January 13, 1947, a petition for a rehearing, consisting of 15 pages, and said petition was denied on January 14, 1947. Petitioners thereafter prepared a record of the case for filing in the Supreme Court of the United States, consisting of 676 printed pages, in support of a petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit, which petition and supporting brief and appendix thereto, consisting of 32 pages, was, within the time allowed by law, filed in the Supreme Court of the United States, and by that Court was denied on June 9, 1947.

X.

That petitioners have not kept an accurate record of the time spent in the work done by them in the course of this litigation, but they estimate that the number of Court appearances exceeded fifty (50) and that the number of man days spent in office work on the case was from two hundred and fifty (250) to three hundred (300).

XI.

That the property awarded to plaintiff by the judgment in this action consists of four (4) acres in Section 14, Twp. 4 S., R. 4 E of San Ber. M., in the heart of the City

of Palm Springs, and ninety (90) acres in Section 26, Twp. 4 S., R. 4 E of San Ber. M., situated near the business area of said City. That said ninety [8] (90) acres is now being used as a motor court on which there are some forty (40) structures used in connection therewith. That plaintiff, Lee Arenas, is more than seventy (70) years of age, is in feeble health, and is physically unable to care for said property. That if said property were in the hands of a competent manager, the annual income therefrom would probably exceed Twenty Thousand Dollars (\$20,000.00), but under the present management thereof the annual income from said property is about Seven Thousand Five Hundred Dollars (\$7,500.00).

That the compensation of petitioners for services rendered in this case must be paid either from the proceeds of a sale of said property, or from a portion of the income derived therefrom in which latter event it would probably require a substantial part of such income for a period of many years to pay the compensation due to petitioners.

XII.

Petitioners allege that an amount equal to thirty-three and one-third percent ($33\frac{1}{3}\%$) of the actual present day value of plaintiff's property, described in Paragraph IV hereof, would be a reasonable fee to them for the services rendered to plaintiff in securing the allotments awarded plaintiff by the judgment of this Court, as modified by the decree of the Circuit Court of Appeals.

XIII.

That petitioners are entitled to have a lien impressed upon plaintiff's property to secure the amount due them pending the full payment thereof.

XIV.

That by reason of the facts alleged in this petition a receiver should be appointed by the Court to take charge of plaintiff's said property and to manage and operate the same under the orders of the Court, so that the greatest amount of income possible may be derived therefrom, to the end that both plaintiff [9] and petitioners may receive such portions of the income as the Court may deem just and proper, the amounts paid to petitioners to be credited upon the judgment awarded by the Court to petitioners.

Wherefore, the petitioners pray:

1. That an order to show cause, directed to the United States of America and to the plaintiff, Lee Arenas, issue fixing the time and place for the hearing of this petition;

2. That petitioners have judgment against the plaintiff, Lee Arenas, for an amount equal to thirty-three and one-third per cent ($33\frac{1}{3}\%$) of the present day value of the property described in Paragraph IV of this petition, as fees for the services rendered by them to plaintiff in this action, and for the further sum of Two Hundred Fifty-Eight and $67/100$ Dollars (\$258.67) advanced by petitioners as and for necessary expenses in prosecuting this action;

3. That it be adjudged that petitioners have a lien, and that said lien be fixed and impressed, upon the property of plaintiff, described in Paragraph IV of this peti-

tion, to secure the amounts which the Court may find to be due to petitioners, until such time as the amount adjudged by the Court to be due the petitioners is fully paid;

4. That such portion of said property as may be necessary to satisfy the judgment awarded to petitioners herein be sold according to law by a Commissioner appointed by this Court, free from any restriction upon the alienation thereof, and that the proceeds of such sale be applied to the payment of said judgment, and the balance of the proceeds of such sale, if any, be distributed to the plaintiff, or otherwise disposed of as the Court may direct;

5. That, if the Court shall not order said property sold, then and in that event that the Court appoint a receiver to take charge of, manage and operate said property, and to receive and disburse the net income therefrom to the plaintiff and to the [10] Petitioners in such manner and in such amounts and at such times as the Court may order and direct;

6. That Petitioners have such other and further relief as to the Court may seem just and proper.

JOHN W. PRESTON

OLIVER O. CLARK

DAVID D. SALLEE

By John W. Preston

Petitioners [11]

Received copy of the within Petition this 21 day of October, 1947. Irl D. Brett, by R. J.

[Endorsed]: Filed Oct. 24, 1947. Edmund L. Smith, Clerk. [12]

[Title of District Court and Cause]

ORDER TO SHOW CAUSE

Upon reading and filing the Petition of John W. Preston, Oliver O. Clark and David D. Sallee, Esqs., for a supplemental decree for the allowance of attorneys' fees for services rendered by them to the above named plaintiff, Lee Arenas, and for expenses advanced by them for said plaintiff, in the above entitled cause, and for the sale of a sufficient portion of the lands allotted to said plaintiff to pay the amount of attorneys' fees that shall be awarded by the Court to said Petitioners and expenses advanced by them on behalf of said plaintiff, and it appearing to the satisfaction of the Court therefrom and also from the judgment heretofore rendered in this cause that the Court retained "jurisdiction over this action and the subject matter thereof for the purpose of adjudicating the reasonable sums that shall be allowed and paid to the attorneys of record for plaintiff for their services rendered to him in this action and for expenses necessarily incurred by them in his behalf in the prosecution thereof, [13] and for the purpose of making all necessary and proper orders, judgments and decrees for the securing and payment of all such sums so found due and owing by the plaintiff to said attorneys." that this is a proper case for the issuance of an order to show cause to the plaintiff, Lee Arenas, to appear in this Court and answer to said petition;

Now, Therefore, It Is Hereby Ordered that the plaintiff, Lee Arenas, be and appear before this Court in the
 Wm. C. Mathes
 courtroom of the Honorable J. F. T. O'Connor, one of the Judges thereof, at the hour of 10 A. M., on the 16 day of December, 1947, then and there to show cause, if any he has, why attorneys' fees and expenses advanced by them should not be allowed and paid to the Petitioners, John W. Preston, Oliver O. Clark and David D. Sallee, Esqs., in the amounts prayed for and for other relief as set forth in their said Petition.

It Is Further Ordered that a copy of the Petition of
 and this order
 John W. Preston, Oliver O. Clark and David D. Sallee ^
 be served on the plaintiff, Lee Arenas, not later than the 15 day of November, 1947. [Mathes, J. 10/24/47]

Dated this 24 day of October, 1947.

WM. C. MATHES

Judge

[Endorsed]: Filed Oct. 24, 1947. Edmund L. Smith, Clerk. [14]

[Title of District Court and Cause]

SPECIAL APPEARANCE OF, AND MOTION TO
DISMISS BY, THE UNITED STATES OF
AMERICA

Comes now the United States of America and appearing specially and solely for the purpose of this motion to dismiss and not otherwise, moves this Honorable Court to dismiss the Order to Show Cause in the above numbered and entitled proceedings heretofore noticed before this Court for 10:00 A. M. on December 16, 1947, in the courtroom of the Honorable Wm. C. Mathes, one of the Judges thereof, in so far as said Order to Show Cause, and the petition upon which it is based, are directed toward the procuring of an order, or orders, by this Court:

1. Affecting lands, the title to which is vested in the United States, to-wit, the lands described in paragraph IV of said petition.
2. Directing the sale of, or the sequestration of, said lands.
3. Appointing a receiver to take charge of, or to manage, or to operate, or in any manner to affect and supersede the lawful supervision and regulation of said lands by the United States, by and through the Secretary of the Interior of the United States. [15]
4. Appropriating or sequestering, or otherwise affecting or disposing of the income from said lands, except as consented to and approved by the United States through the Secretary of the Interior of the United States.

5. Appropriating or sequestering the income from any business conducted upon said lands except as consented to and approved by the United States through the Secretary of the Interior of the United States.

6. Making any order herein, the effect of which would be to supersede the authority of the Secretary of the Interior of the United States, to determine what, if any, business ventures could be conducted upon said lands during the time title thereto is vested in the United States, or who may manage and control the same, or the effect of which would be to supersede, limit or impair present existing or future regulations of business activities upon such lands by the Secretary of the Interior of the United States.

7. Imposing, directly or indirectly, a judgment for costs, or attorney fees, or both, against property the title to which is vested in, or the supervision and control of which is exclusively entrusted to, the United States.

Said motion is made upon the following grounds:

1. That the United States has not submitted to the jurisdiction of this Court as to any of the foregoing matters; that this Court can obtain no jurisdiction over the United States as to such matters without its consent and that the United States is an indispensable party, as respondent to the petition and Order to Show Cause, in so far as they are directed to the foregoing matters.

2. That it is the established law of this case, by the final judgment of the Circuit Court of Appeals for the Ninth Circuit, that by consenting to the suit to establish

the rights of Lee Arenas to a trust patent to the lands involved in this proceeding, as provided in Title 25, Section 345, U. S. C., the United States has not consented to the imposition [16] of liability for costs or other expenses of litigation against it.

Said motion will be based upon the affidavit of Irl D. Brett, Esq., which is served herewith, together with the records and files in this proceeding and the statutory and case law applying thereto.

Dated: December 16th, 1947.

JAMES M. CARTER

United States Attorney

IRL D. BRETT

Special Assistant to the Attorney General

By Irl D. Brett

Attorneys for Defendant United States
of America

Received copy of the within, also affidavit, this Dec. 16, 1947. John W. Preston.

Received copy Dec. 16, 1947. Jerry Giesler, Meyer M. Willner, H. L. Thompson, Attys. for Lee Arenas.

[Endorsed]: Filed Dec. 16, 1947. Edmund L. Smith, Clerk. [17]

[Title of District Court and Cause]

AFFIDAVIT OF IRL D. BRETT

State of California

County of Los Angeles—ss.

Irl D. Brett, being first duly sworn, says:

I am a Special Assistant to the Attorney General of the United States, Lands Division, Department of Justice, assigned to the office of James M. Carter, United States Attorney, at Los Angeles, and in such capacity am charged with the handling of the special appearance of, and motion to dismiss by, the United States of America in the above numbered and entitled proceeding in respect to the Petition for Supplemental Decree and the Order to Show Cause based thereon, which Order is returnable before this court on December 16, 1947, at 10 o'clock a. m.

That it appears from the Petition, and particularly from paragraphs IV and XI thereof, that the property which is the subject matter of said Petition and Order to Show Cause consists of Lots 46 and 47 in Section 14, Township 4 South, Range 4 East, S.B.B. & M., and certain portions of Section 26, Township 4 South, Range 4 East, S.B.B. & M., together with the income from a business [18] operation (motor court) located on a portion thereof; that by a conveyance executed by Grover Cleveland, President of the United States of America, dated May 14, 1896, and recorded in the General Land Office at Washington, D. C.

in Volume 21, pages 231 to 233, inclusive, all of Sections 14 and 26, Township 4 South, Range 4 East, S.B.B. & M. were declared to be held by the United States of America in trust for the sole use and benefit of the Agua Caliente Band or Village of Mission Indians; that a true and correct copy of said Trust Patent is annexed to this affidavit, marked Exhibit 1, and by such reference incorporated herein as if herein set out in full; that at all times subsequent to said date and to and including the date of this affidavit, said lands have been owned by the United States of America and held subject to said Trust Patent.

That it appears from the Petition for Supplemental Decree that it is based upon the provisions of a reservation in the Judgment made by the Honorable J. F. T. O'Connor, one of the Judges of this court, dated and entered on May 14, 1945 in Civil Order Book 32 at page 581, and identified and designated as paragraph VIII, which reservation is repeated and set forth verbatim in the Order to Show Cause, commencing on page 1, line 18, and ending on page 2, line 3; that the records, files, pleadings, briefs, and decisions rendered in connection with this proceeding disclose that no prayer for such reserved jurisdiction appeared in the original Complaint; that the original Judgment was in favor of the United States and was a summary judgment determining that the plaintiff was not entitled to any relief as against the United States; that the Order and Decree of the United States Supreme Court did not include or refer to such reservation of jurisdiction nor to the remedy sought by the Petition and Order to Show Cause (322

U. S. 419); that the first time such jurisdiction was prayed for was in paragraph 3 of the prayer of the Third Amended Complaint, in which plaintiff prayed:

“3. That plaintiff have such other and further relief as justice and equity may require, including the costs of this action.”

That the Answer by the United States to the Third Amended Complaint objected to and denied every form of relief as sought by plaintiff and concluded with a request for dismissal with costs; that in Finding XLIV the Court found: [19]

“XLIV.

“That plaintiff in this action is what is known as a restricted Indian and as such is without plenary power in his own right to contract for the payment of Court costs, attorneys’ fees and other expenses necessarily incurred in the prosecution of this litigation and the Court, not having as yet determined the issues that will arise in this behalf, finds that this is a proper cause within which to retain jurisdiction for the purpose of determining and disposing of all issues which may arise concerning said subject matter.”

And in general Conclusion of Law No. XVII, the Court concluded:

“That the several attorneys for the plaintiff in this action have incurred expenses of considerable magnitude and have performed valuable services for the plaintiff in this action; that the power of plaintiff to

contract for the payment of such expenses and for such services is restricted by law; that the present cause is a proper one for the Court to retain jurisdiction of the subject matter thereof for the purpose of hearing and determining all issues that appertain to the determination of the amount of such expenses and the value of such services and for the payment and discharge thereof and for such orders in connection therewith as the Court of equity may deem meet and proper."

That said Finding and Conclusion were attacked by the United States, which sought to strike the same in a document dated June 9, 1945, filed June 11, 1945, and entitled "Motion to Vacate Judgment and Conclusions and to Amend Findings of Fact"; that said motion was overruled by the court and paragraph VIII of the Judgment was included therein, as hereinabove alleged; that upon appeal from said judgment on December 20, 1945, the United States filed its Statement of Points on Appeal and included therein as Point 8 the following, to-wit: [20]

"8. That the District Court erred in holding that appellee is restricted by law from contracting for the payment of legal services and that the Court retained jurisdiction over this action for the purpose of adjudicating the reasonable sum that shall be allowed and paid to the attorneys of record for plaintiff for their services rendered to him in this action and for expenses necessarily incurred by them in his behalf in the prosecution thereof."

That affiant does not have available to him the briefs upon appeal in the Circuit Court of Appeals upon the second appeal, which was from the judgment in which this reservation of jurisdiction is contained; but in the decision of the Circuit Court in the case of United States of America vs. Lee Arenas, 158 F. (2d) 730, at page 753, the Circuit Court expressly refers to the objections by the United States to said reserved jurisdiction, and holds that such reservation does not affect the United States because by consenting to this action under Title 25, Section 345, U. S. C. A., the United States has not consented to the imposition of liability for costs or other expenses as against it, and that there is "neither internal nor external evidence that the Judgment reflects any such indication"; that neither in the Petition for Writ of Certiorari filed by Lee Arenas, nor the Conditional Cross-Petition filed by the United States, was any issue raised, argued, or submitted with respect to the reserved jurisdiction as set forth in paragraph VIII of said Judgment.

IRL D. BRETT

Affiant

Subscribed and sworn to before me this 16th day of December, 1947.

(Seal)

EDMUND L. SMITH,
Clerk, United States District Court, Southern
District of California

By Edw. F. Drew,
Deputy [21]

EXHIBIT 1

UNITED STATES OF AMERICA

To all to whom these presents shall come, Greeting:

Whereas it is provided by an Act of Congress entitled "An Act for the relief of the Mission Indians of the State of California" approved January twelfth Anno Domini one thousand eight hundred and ninety one (26 Stats 712) that "the Secretary of the Interior shall appoint three disinterested persons as Commissioners to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California upon reservations which shall be secured to them.

"Section 2. That it shall be the duty of said Commissioners to select a reservation for each band or village of the Mission Indians residing within said State, which reservation shall include, as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians and which shall be sufficient in extent to meet their just requirements, which selection shall be valid when approved by the Secretary of the Interior."

"Section 3. That the Commissioners upon the completion of their duties shall report the result to the Secretary of the Interior, who, if no valid objection exists, shall cause a patent to issue for each of the reservations selected by the Commission and approved by him in favor of each band or village of Indians occupying any such reservation, which patent shall be of the legal effect and declare that the United States does and will hold the land thus patented subject to the provisions of section 4 of this act, for the period of twenty-five years in trust, for the sole use and benefit of the band or village to which it is issued, and

that at the expiration of said period the United States will convey the same or the remaining portion not previously patented in severalty by patent to said band or village discharged of said trust and free of all charges or incumbrance whatsoever.”

And Whereas it appears by a letter dated October twenty-sixth, eighteen hundred and ninety-five from the Commissioner of Indian Affairs, and an order dated October twenty-eighth eighteen hundred and ninety-five from the Secretary of the Interior that a selection has been made by the Commissioners appointed [22] and acting under said act of Congress of January twelfth eighteen hundred and ninety one for the Agua Caliente band or village of Mission Indians covering sections twelve, fourteen, twenty-two, twenty-four, twenty-six and thirty-four of township four South, range four east, of the San Bernardino Meridian in the State of California containing three thousand eight hundred and forty four acres and eighty hundredths of an acre.

Now Know Ye, That the United States of America in consideration of the premises and in accordance with the provisions of the said Act of Congress approved January twelfth eighteen hundred and ninety-one, hereby declares that it does and will hold the said tracts of land selected as aforesaid (subject to all the restrictions and conditions contained in the said act of Congress of January 12, 1891) for the period of twenty-five years in trust for the sole use and benefit of the said Agua Caliente Band or Village of Mission Indians according to the laws of California and at the expiration of said period the United States will convey the same, or the remaining portion not patented to individuals, by patent to said Agua Caliente Band or Village of Mission Indians as aforesaid in fee simple dis-

charged of said trust and free of all charge or incumbrance whatsoever.

Provided, That when patents are issued under the fifth section of said act of January twelfth, eighteen hundred and ninety-one in favor of individual Indians for lands covered by this patent they will override (to the extent of the land covered thereby) this patent, and will separate the individual allotment from the lands left in common, and there is reserved from the lands hereby held in trust for said Agua Caliente Band or Village of Mission Indians a right of way thereon, for ditches or canals, constructed by the authority of the United States.

In testimony whereof, I, Grover Cleveland, President of the United States of America have caused these Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed. [23]

(Seal) Given under my hand at the City of Washington this fourteenth day of May in the year of our Lord one thousand eight hundred and ninety six and of the Independence of the United States the one hundred and twentieth.

By the President, Grover Cleveland

By M. McKean, Secretary

L.Q.C. Lamar Recorder of the General Land Office
Recorded Vol. 21 pp 231 to 233 inclusive

Received copy of this affidavit December 16, 1947. Jerry Giesler, H. L. Thompson, Meyer M. Willner, Attys. for Lee Arenas; John W. Preston, Atty. for Petitioners.

[Endorsed]: Filed Dec. 16, 1947. Edmund L. Smith, Clerk. [24]

[Title of District Court and Cause]

APPEARANCE

The undersigned hereby appear in the above entitled matter as attorneys for the plaintiff in connection only with the Order to Show Cause and Petition for Supplemental Decree for Attorneys' Fees and Expenses Advanced, for Sale of Property and for Appointment of Receiver, which petition was filed by John W. Preston, Oliver O. Clark and David D. Sallee.

Dated at Los Angeles, California, December 18, 1947.

JERRY GIESLER
MEYER M. WILLNER
H. L. THOMPSON

By Meyer M. Willner

Attorneys for Plaintiff

Received copy of the within appearance this 22nd day of December, 1947. James M. Carter, Irl D. Brett, Attorneys for United States.

This Dec. 22, 1947. John W. Preston, one of Attys. for Plaintiff.

[Endorsed]: Filed Dec. 22, 1947. Edmund L. Smith, Clerk. [25]

In the District Court of the United States
Southern District of California
Central Division

No. 1321 O'C—Civil

LEE ARENAS, . Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

ORDER DENYING DISMISSAL

The Petition for Supplemental Decree in the above entitled cause for Attorneys' fees and expenses advanced by Messrs. John W. Preston, Oliver O. Clark and David D. Sallee, attorneys for plaintiff Lee Arenas, came on to be heard on the 22nd day of December, 1947, upon the motion of the United States of America to dismiss said petition as to said defendant, filed by its said attorneys in said action, and the Court having heard the arguments of counsel for the United States and also for the Petitioners, and being fully advised in the premises, does hereby find that said motion to dismiss is not well taken and should be denied, without prejudice.

Wherefore, It is Ordered, Adjudged and Decreed that said motion to dismiss be and the same is hereby denied without prejudice.

~~Dated: December 24, 1947.~~

Done in Open Court Dec. 22, 1947.

WM. C. MATHES

Judge

Approved as to Form: Irl D. Brett for James M. Carter, United States Attorney.

Judgment entered Dec. 31, 1947. Docketed Dec. 31, 1947. C. O. Book 47, page 630. Edmund L. Smith, Clerk; by Louis J. Somers, Deputy.

[Endorsed]: Filed Dec. 31, 1947. Edmund L. Smith, Clerk. [26]

[Title of District Court and Cause]

ANSWER TO PETITION AND ORDER TO SHOW
CAUSE IN RE SUPPLEMENTAL DECREE
FOR ATTORNEYS' FEES AND EXPENSES
ADVANCED FOR SALE OF PROPERTY, AND
FOR APPOINTMENT OF RECEIVER

Comes now the United States of America, by direction of the Attorney General of the United States, and appearing specially in its own behalf, and appearing generally in its capacity as Guardian for plaintiff and respondent, Lee Arenas, and by virtue of its obligation to represent and defend said plaintiff and respondent, in answer to the petition of John W. Preston, Oliver O. Clark, and David D. Sallee, heretofore filed on October 24, 1947, and the Order to Show Cause directed to plaintiff and respondent, Lee Arenas, dated October 24, 1947, and reserving the objections heretofore set forth in the special appearance of, and motions to dismiss by, the United States of America, heretofore served and filed on December 16, 1947, which motion was denied without prejudice by [27] an Order of this Court dated December 24, 1947, at page 630 of Judgments, denies and alleges as follows:

I.

Alleges that the United States, by reason of the helpless and dependent character of the Palm Springs Band of Mission Indians, is the guardian of, and has the exclusive control of, their property, including the lands and premises described in paragraph IV of the petition, and, by virtue thereof, there is imposed upon it the duty to do whatever matter be necessary for their guidance, welfare, and protection, and, particularly, for the guidance, welfare, de-

fense and protection of Lee Arenas in connection with the lands aforesaid.

II.

That, to grant that portion of the petition which seeks to impose a lien upon and to involuntarily alienate the title to such restricted property; to interfere with, control, or otherwise affect or direct the management and control thereof; to impose judicial control upon the supervision and control of said property in said Indian reservation by the Secretary of the Interior of the United States and appoint a Receiver for said restricted property, except with the consent and approval of the Secretary of the Interior, is a violation of the governmental rights of the United States. That Lee Arenas is a restricted Indian ward of the United States, and by virtue of the Acts of Congress the property in controversy is restricted so that no interest in the property may in any way be encumbered or alienated without the consent of the Secretary of the Interior or unless the restrictions against the alienation are removed by the Secretary of the Interior; that it is in the governmental interest of the United States to enforce the restrictions against alienation imposed by Congress.

III.

That these answering respondents deny the allegations contained in paragraph II of said petition, except that it is admitted that a written document entitled "Agreement," dated November 20, 1940, was [28] signed by David D. Sallee, and appears to bear the signature of Lee Arenas; that Lee Arenas is aged and infirm and has stated that he does not recall signing such document; that upon such ground these answering respondents deny that he signed the same. In this connection these respondents affirma-

tively allege that such agreement if executed by Lee Arenas, was solely between David D. Sallee and Lee Arenas, and provided, by its express terms, inter alia: [29]

“That the Party of the First Part hereby contracts with, retains and employs the Party of the Second Part as attorney in the matters hereinafter mentioned, subject to the approval of the Commissioner of Indian Affairs, and the Secretary of the Interior, pursuant to Section 2103 of the Revised Statutes of the United States of America.

“It Is Agreed that the said attorney is hereby authorized to associate with him in said work hereunder such assistants, including attorneys, as he may select, provided that the Government of the United States shall not be liable for any expenses;

“It Is Further Understood that in event the Party of the Second part, or his associates who are actually associated in the litigation and investigation as aforesaid, shall advance any necessary expenses, they shall be reimbursed by the Party of the First Part, from the property recovered, such actual expenses as are strictly necessary or proper in connection with the printing of briefs, court costs for proceedings and other similar matters, and to include such actual and necessary traveling expenses, clerical hire, stenographic expense, and the like as may be properly required for the prosecution of said case, or cases; provided that all such expenditures shall be itemized and verified by the Party of the Second Part, and shall be accompanied by proper vouchers, and shall be paid only upon the approval of the Secretary of the Interior, or an officer designated by him who shall certify the same.

“It Is Further Understood and Agreed by and between the parties to this Agreement, that in event of a misunderstanding as regards the manner in which the compensation to the Party of the Second Part from the Party of the First Part shall be paid; and Trust Patents or receipts have been issued, and in [30] that event the Party of the First Part shall thereupon make application for a removal of restrictions upon sufficient of the premises to be sold, and from the proceeds of said sale or sales to pay said Party of the Second Part; that in event it is not for the best interests of the parties hereto to sell said land, the removal of restrictions shall be applied for upon properties coming to the First Party, as selected by said Second Party, upon the basis of one-tenth of the property— That is to say, Second Party shall select one property that does not exceed ten per cent of the total value of all properties, and that First Party shall select nine properties that do not exceed ninety per cent of the total value of said properties, and continue to make such selections until all property shall have been selected. That the property selected by the Second Party shall then be deeded to said Second Party, subject to the approval of the Secretary of the Interior and the Commissioner of Indian Affairs.

“And It Is Further Understood and agreed that no assignment of this contract, or any interest therein, shall be made without the consent previously obtained from the Commissioner of Indian Affairs, and the Secretary of the Interior, and that such assignment if made, must comply with Section 2106 of the Revised Statutes of the United States.”

That although such agreement was tendered to the Commissioner of Indian Affairs and the Secretary of the Interior, it was not approved and, to the contrary, was expressly disapproved.

These respondents further allege in respect to said alleged agreement of November 20, 1940, that none of the conditions precedent heretofore quoted therefrom in this paragraph have been complied with by petitioners.

Further answering paragraph II of said Petition, these respondents deny that a new contract was entered into on February 1, 1945, between Lee Arenas and these petitioners which superseded the alleged agreement of November 20, 1940. In this connection these respondents allege that if any such agreement was entered into on February 1, 1945, it was wholly prospective and contains no provision whatsoever with respect to the alleged agreement of November 20, 1940.

These respondents admit that a document dated February 1, 1945, which Lee Arenas now states he has no recollection of executing, does contain the clause which is quoted and set forth in paragraph II of the petition on page 2, lines 14 to 18, inclusive; but further allege that said text is immediately followed, limited, and conditioned by the following sentence, to-wit:

“All to be subject to the rules and regulations of the Department of the Interior”;

that, if such agreement dated February 1, 1945, was made and is in effect, the conditions precedent, to-wit, that such agreement was to be subject to the rules and regulations of the Department of the Interior, have not been fulfilled, met, or tendered by petitioners.

Further answering paragraph II of said Petition, these respondents allege that at and prior to the time that the purported agreement dated February 1, 1945, was signed by respondent Lee Arenas, petitioners were obligated and bound by a firm contract, to-wit, the contract dated November 20, 1940, as follows:

“And it is also understood and agreed that the said attorney at law, (David D. Sallee), and his associates, if any, shall pursue the litigation in question to and through the court of final resort, unless authorized by the Secretary of the Interior to terminate the proceedings at an intermediate stage thereof.”

That no such authorization was requested or obtained from the Secretary of the Interior; that the circumstances of this litigation were such that at the date when the agreement of November 20, 1940 was executed, and at all times thereafter, to and including February 1, 1945, these petition- [32] ers and each of them then knew that the remedy then sought by respondent Lee Arenas and to perform which petitioner David D. Sallee had obligated himself, and his associates, would, of necessity, require a petition for certiorari in the Supreme Court of the United States, preparation of the necessary briefs and presentation of the necessary argument in support thereof and in support of an appeal in said Court if certiorari were granted, together with the prosecution through a court of final resort following the decision of the Supreme Court if such decision were favorable to respondent Lee Arenas and resulted in a reversal of the decision theretofore made in the so-called St. Marie case. That it was represented to respondent Lee Arenas, that said contract of November 20, 1940, did not include the obligations aforesaid and

that the performance of services following the decision of the United States Circuit Court of Appeals after the first judgment in this proceeding, was an additional service which would justify and require additional compensation and, also, that at the time of the negotiation leading up to the execution of the document dated February 1, 1945, respondent Lee Arenas, was aged and infirm, was then being represented as counsel by these petitioners and each of them, and did not have or receive independent legal advice as to the terms, provisions and obligations of the agreement dated November 20, 1940, particularly that said agreement specifically covered and provided for the compensation to be received by said attorney for pursuing the litigation through the court of final resort. That by reason of the aforesaid the agreement contained in the document dated February 1, 1945, is null and void.

IV.

Answering paragraph VI of the said petition, these respondents allege that the period of restriction on alienation is subject to extension annually by the President of the United States, for a period not to exceed twenty-five (25) years, and that each President of the United States, since the effective date of the act, has extended such period of restriction on alienation annually for an additional period of twenty- [33] five (25) years. That such authority is vested in the President under the provisions of Title 25, Section 391, U. S. C.

V.

Respondents deny the allegations contained in paragraph VII of said petition and allege that by reason of the restrictions upon alienation, and the limited right of user under existing laws, and the uncertainty as to when, if at

all, the lands described in paragraph IV of the petition will ever be released from such restrictions, said lands have a value which is problematical and highly speculative, the exact amount of which is not now known to respondents.

That, as to the rentals, by reason of existing laws and restrictions upon the use of the premises and upon the character of permit which can be granted in respect of such use, the rentals now being produced are the full amount that could be produced therefrom and the production of any increased rental or income must necessarily await the change or modification of such existing laws and restrictions upon the use thereof. That the time when such change or modification will be made and the nature and extent thereof and the effect thereof upon the possibilities for an increase of income from said restricted lands is, at this time, wholly conjectural and speculative.

VI.

Answering paragraph VIII, respondents have no information or belief respecting the allegations contained in paragraph VIII of the petition, and upon such ground deny the same.

Respondents further allege that if said amount has been expended by petitioners and has not been repaid, petitioners have not furnished proper items, vouchers, and verified and submitted them to the Secretary of the Interior or to any officer designated by him, for his approval and certification. [34]

VII.

Answering paragraph X of the petition, these respondents deny the allegations contained therein.

VIII.

Answering paragraph XI, these respondents deny that portion thereof which alleges that the annual income could be increased in the hands of a competent manager; and further allege that this Court has no jurisdiction or control over the operation and management of such restricted property, but that the exclusive jurisdiction, control and management thereof is vested by Congress in the United States.

Respondents further deny that any portion of petitioners' compensation may be paid from the proceeds of a sale of said property or from a portion of the income derived therefrom except and until the restrictions now existing upon the alienation thereof have been removed, and that this Court does not have jurisdiction to order or require a sale or other alienation of, or the encumbrance of, said restricted real estate or the income derived therefrom.

IX.

Answering paragraphs XII, XIII, and XIV, respondents deny each and every allegation therein; but respondents admit that petitioners have performed valuable services for Lee Arenas and are entitled to recover a money judgment against him to the extent of ten per cent (10%) of the amount of the reasonable value of the restricted lands described in paragraph IV of the petition as of the date of the completion of this litigation when, but only when, they have completed and fulfilled such agreements, if any, as they may have made with him, including all conditions precedent, as therein provided; that they are not entitled, and this Court has no jurisdiction to enter an order, judgment, or decree in their favor by which the

lands described in paragraph IV of said petition, and the income derived therefrom, are alienated, transferred or encumbered, or by which order, judgment, or decree said lands or income is taken [35] from or placed beyond the exclusive management, operation and control of the United States of America by and through the Secretary of the Interior.

Wherefore, respondents pray:

1. That this Court find and determine that the Petition and Order to Show Cause are premature, in that petitioners have not fully performed and complied with the conditions precedent of their employment, and have not completed the work to be done by them, and that said Order to Show Cause be discharged;

2. That, if it be held that petitioners are entitled to any relief, such relief be limited to the Contract fee fixed in the agreement dated November 20, 1940, fixed in money and as a personal money judgment against respondent Lee Arenas only;

3. That, if it be determined that the agreement dated November 20, 1940, has been superseded by the agreement dated February 1, 1945, that the amount and value of the property described in paragraph IV of the Petition be fixed and determined as of February 10, 1948, or such other date as the Court shall determine as the date when petitioners shall have fully completed the obligations on their part to be performed, fixed in money and as a personal money judgment against respondent Lee Arenas only;

4. That it be ordered and decreed that petitioners are not entitled to affix a lien upon, or to an order for the disposition, alienation or sale of the restricted real property or the income derived therefrom and are not entitled to the appointment of a receiver or other ancillary relief as against said restricted property;

5. That the issues as to the value of the interest of Lee Arenas in the restricted property, be tried to a jury;

6. If the Court shall hold and determine that petitioners are to be paid on a different basis than the contract fee as provided in the agreement of November 20, 1940, that the reasonable value of the services of petitioners performed for respondent Lee Arenas in this proceeding, be tried to a jury.

Dated: February 9th, 1948.

JAMES M. CARTER

United States Attorney

IRL D. BRETT

Special Assistant to the Attorney General

By Irl D. Brett

Attorneys for Respondents, United States of
America and Lee Arenas

Received copy of the within answer this 9th day of February, 1948. John W. Preston [RH], David D. Sallee [RH], Oliver O. Clark [RH].

[Endorsed]: Filed Feb. 9, 1948. Edmund L. Smith, Clerk. [37]

[Minutes: Tuesday, February 10, 1948]

Present: The Honorable Wm. C. Mathes, District Judge.

For hearing on return of order of Oct. 24, 1947, to show cause why attorneys' fees and expenses should not be allowed; John W. Preston, Oliver O. Clark, and David D. Sallee, Esqs., appearing as counsel for plaintiff; Irl D. Brett, Spec. Ass't to Att'y Gen'l, appearing as counsel for Gov't, and in this proceeding for Lee Arenas;

On Motion of Meyer Wellner, it is ordered that H. L. Thompson may withdraw and John J. Taheny, Esq., is substituted as counsel for Def't Arenas, and associated with Horace A. Diebert, Esq., in this case on motion of Mr. Taheny;

Attorney Brett makes a statement and files stipulation and interrogatories. Attorney Brett waives jury trial. Attorney Taheny makes a statement and says he feels a jury should not be requested and assuming the Def't Arenas is entitled to a jury trial, waives same.

Interrogatories filed Feb. 10, 1948, and stipulations are offered in evidence. Petitioner's Ex. 1, 2, 3, 4, 4-A, 5, 6, 6-A, 7, and 9 are allowed in evidence, and Petitioner's Ex. 8 is marked for ident.

At 11:45 A. M. Court declares a recess in these proceedings to Feb. 11, 1948, 9:30 A. M. [38]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

Be It Remembered that John W. Preston, Oliver O. Clark, and David D. Sallee, heretofore regularly petitioned the above entitled Court that a supplemental decree be made and entered herein, which should determine the amount of their reasonable compensation for services rendered to the plaintiff herein, and the amount of costs and expenses paid by said petitioners on behalf of the plaintiff herein, and for which reimbursement has not been made, and fixing the time for the payment thereof, and the manner of such payment, and the security thereof, and for appropriate ancillary relief in respect thereof, and that said petition, to which reference is hereby made for further particulars, came on regularly for hearing after proper notice to all persons interested therein, of the time and place of such hearing, before the above entitled Court, Honorable W. C. Mathes, judge thereof presiding, in the courtroom of said Court in the United States Post Office [39] Building at the northeast corner of Temple and Spring Streets, in the City of Los Angeles, County of Los Angeles, State of California, and on the 12th and 20th of February, 1948, and the 8, 29, 30, and 31st days of March, 1948;

And Be It Further Remembered that upon said hearing the Petitioners appeared personally and upon their own behalf; the United States of America appeared specially by Irl D. Brett, as Special Assistant to the Attorney General, Lands Division, Department of Justice of the United States of America, and Lee Arenas, the plaintiff

herein appeared personally, and by said Irl D. Brett as such Special Assistant to the Attorney General, and by John J. Tahaney, an Attorney at Law and Solicitor;

Whereupon evidence, both oral and documentary, was offered and received, and the cause was argued and submitted to the Court for decision, and

Now, Therefore, the Court being fully advised in the premises, makes these its findings of fact and conclusions of law herein, to wit:

Findings of Fact

I.

That Petitioners, Oliver O. Clark and David D. Sallee, were originally employed by plaintiff, Lee Arenas, as evidenced by a contract in writing of date November 20th, 1940, in evidence here as Petitioners' Exhibit No. 6, to represent him in all matters respecting an allotment of lands to him in the Palm Springs Reservation of the Agua Caliente Band of Mission Indians, in Riverside County, California.

II.

That said contract remained in force until about September 7th, 1943, at which time it was orally agreed between plaintiff [40] and said petitioners that said John W. Preston would be associated with said Oliver O. Clark and David D. Sallee in the performance thereafter of the duties undertaken by said Oliver O. Clark and David D. Sallee on behalf of plaintiff, as aforesaid, and that said petitioners should be compensated upon a quantum meruit basis for their said services, and should be reimbursed for all expenses incurred by them in behalf of plaintiff and members of his family. That said agreement is evi-

denced by a writing, which is petitioners' Exhibit Number 7 herein, and which was executed on or about February 1st, 1945, and continued in force thereafter.

III.

That said petitioners, prior to the filing of their petition herein, fully performed, and completed, the duties of their said employment.

IV.

That each of the allegations contained in Paragraphs I, [Mathes, J.] of the Petition herein III, IV, V, VI, VIII, IX and X, \wedge is true.

V.

That the lands allotted to said Lee Arenas, as aforesaid, and said Lee Arenas, are entitled to receive for domestic, agricultural and horticultural uses upon said lands, water from Tahquitz and Andreas Canyons in the mountains above said lands, proportionately with all other members of said Mission Band of Indians in respect of the land within said Indian reservation, and that the water available from said sources, for said purposes, is reasonable adequate therefor.

VI.

That the reasonable market value of said lands allotted [41] to said Lee Arenas, as aforesaid, and of said water rights, is uncertain, but, nevertheless, is very substantial.

VII.

That the petitioners Oliver O. Clark and David D. Sallee rendered and performed legal services for and on behalf of, and at the request of, and by agreement with the plaintiff in the above entitled cause for which said petitioners

[Mathes, J.] the reasonable value thereof; which reasonable value was and is are entitled to receive as compensation \wedge ten per cent (10%) of the value of the lands allotted to Lee Arenas and Guadaloupe Arenas under the allotment proceedings of 1927, and of said water rights incident to said lands, being the same lands described in Paragraph IV of the Petition filed by the petitioners herein as follows:

“Lands Allotted to Lee Arenas:

Parcel (a) Homesite: Lot 46, Section 14, Township 4 South, Range 4 East, S.B.B. & M., comprising two (2) acres;

Parcel (b) Irrigated: Tract No. 39, Section 26, Township 4 South, Range 4 East, S.B.B. & M., comprising five (5) acres;

Parcel (C) Desert: $E\frac{1}{2}$ $SW\frac{1}{4}$ $NW\frac{1}{4}$ and $SE\frac{1}{4}$ $NW\frac{1}{4}$ $NW\frac{1}{4}$ and $SW\frac{1}{4}$ $NE\frac{1}{4}$ $NW\frac{1}{4}$ all in Section 26, Township 4 South, Range 4 East, S.B.B. & M., comprising forty (40) acres.

“Lands Allotted to Guadaloupe Arenas:

Parcel (a) Homesite: Lot 47, Section 14, Township 4 South, Range 4 East, S.B.B. & M., comprising two (2) acres;

Parcel (b) Irrigated: Tract No. 40, Section 26, Township 4 South, Range 4 East, S.B.B. & M., comprising five (5) acres;

Parcel (C) Desert: $SE\frac{1}{4}$ $NW\frac{1}{4}$ all in Section 26, Township 4 South, Range 4 East, S.B.B. & M., comprising forty (40) acres.” [42]

VIII.

That the petitioner John W. Preston rendered and performed legal services for and on behalf of, and at the request of, and by agreement with the plaintiff in the above entitled cause for which said petitioner is entitled [Mathes, J.] the reasonable value thereof; which reasonable value was and is to receive as compensation \wedge twelve and one-half per cent ($12\frac{1}{2}\%$) of the value of the lands allotted to Lee Arenas and Guadalupe Arenas under the allotment proceedings of 1927, and of said water rights incident to said lands, being the same lands described in Paragraph IV of the Petition herein and in Paragraph VII of these Findings; and that said petitioner John W. Preston has advanced and paid out for said plaintiff, as necessary costs and expenses of said action sums aggregating Two Hundred Fifty-eight and $67/100$ Dollars (\$258.67) for which said petitioner is entitled to reimbursement from said plaintiff.

IX.

That no part of the compensation, costs and expenses mentioned and described in Paragraphs VII and VIII of these Findings has been paid, and all thereof is now due and unpaid.

X.

That it is reasonable and equitable that until the compensation, costs and expenses due from the plaintiff to the petitioners, as described and set forth in Paragraphs VII and VIII of these Findings, are fully paid that petitioners be secured by an equitable lien upon the whole of the

allotted lands and the water rights incident thereto and upon twenty-two and one-half per cent ($22\frac{1}{2}\%$) of the [Mathes, J.] and necessary income therefrom in excess of the reasonable \wedge cost of operating said properties.

XI.

That it is reasonable and equitable that the plaintiff be [43] allowed, and have, a period of three months from and after the entry of judgment and decree herein within which to satisfy and discharge the equitable lien upon said allotted lands and the water rights incident thereto and upon that portion of the income therefrom, provided and set forth in Paragraph X_i of these Findings, and that any and all further proceedings by the petitioners for the enforcement and satisfaction of said equitable lien be stayed for a period of three months from and after the entry of judgment and decree herein.

From the foregoing facts, the Court concludes:

Conclusions of Law

I.

That the petitioners Oliver O. Clark and David D. Sallee are entitled to receive as compensation for their services to the plaintiff in the above entitled action ten per cent (10%) of the value of the lands allotted to Lee Arenas and Guadaloupe Arenas under the allotment proceedings of 1927 and of the water rights incident thereto, and to a judgment therefor.

II.

That the petitioner John W. Preston is entitled to receive as compensation for his services to the plaintiff in the above entitled action twelve and one-half per cent ($12\frac{1}{2}\%$) of the value of the lands allotted to Lee Arenas and Guadeloupe Arenas under the allotment proceedings of 1927 and of the water rights incident thereto, and said petitioner is also entitled to reimbursement from the plaintiff the sum of Two Hundred Fifty-eight and $67/100$ Dollars advanced by said petitioner as costs and expenses of suit, and to a judgment therefor.

III.

That the petitioners are entitled to an immediate, equitable lien, to secure the payment of said compensation and to secure payment of the amount of Two Hundred Fifty-Eight and sixty-seven one-hundredths Dollars (\$258.67), paid by the Petitioner John W. Preston for the use and benefit of said plaintiff, upon the allotments made to Lee Arenas and Guadeloupe Arenas under the allotment proceeding of 1927 and upon all rights conferred by said allotments, and upon the entire interest and estate of Lee Arenas and his heirs in the lands embraced within said allotments, and upon the entire interest in said lands in the hands of the United States of America, and upon twenty-two and one-half per cent ($22\frac{1}{2}\%$) of the income [Mathes, J.] and necessary therefrom in excess of the reasonable operating expenses of said property, until said compensation and said sum of Two Hundred Fifty-Eight and sixty-seven one-hundredths Dollars (\$258.67), shall be fully paid and satisfied.

IV.

That the Petitioner John W. Preston is entitled to judgment against the plaintiff for the sum of Two Hundred Fifty-Eight and sixty-seven one-hundredths Dollars (\$258.67) heretofore advanced by said Petitioners for the use and benefit of said plaintiff, and is entitled to an equitable lien to secure the payment thereof upon the lands allotted to the plaintiff and upon the income therefrom until said judgment is fully paid.

V.

That the plaintiff is entitled to, and shall be allowed, a period of three months from and after the entry of judgment and decree herein within which to satisfy and discharge the equitable lien allowed and granted to the petitioners, as provided and set forth in Paragraphs III and IV of these Conclusions of Law, and that any and all further proceedings by the petitioners for the enforcement and satisfaction of said equitable lien be stayed for a period of three months from and after the entry of judgment and decree herein. [45]

VI.

That it is proper that the Court should retain jurisdiction over this action, and the parties thereto, and the subject matter thereof in order to act upon and determine the time when, and the manner in which, and the method whereby, the payment of all or any part of the compensation and reimbursement for expenses hereby awarded shall be made or further secured, and in order to require and

compel the satisfaction and discharge, or enforcement, of the equitable lien awarded to the petitioners; and if necessary, for the determination of the money value of the legal services rendered and performed by the petitioners for and on behalf of the plaintiff in this action, and for the appointment of a Receiver or Commissioner to effectuate the judgment and decree herein, in accordance with the equitable jurisdiction, practice and procedure of this Court.

VII.

That the parties to this proceeding should pay their own costs, respectively, incurred herein.

Let judgment be entered accordingly.

Dated this 30 day of April, 1948.

WM. C. MATHES

Judge

Approved as to form as provided by Rule 7, April 30, 1948. Irl D. Brett, Special Assistant to the Attorney General.

Received copy of the within proposed Findings of Fact & Conclusions of Law, April 30, 1948. James M. Carter, U. S. Attorney, by Irl D. Brett, Special Asst. to the Atty. General.

[Endorsed]: Filed May 3, 1948. Edmund L. Smith, Clerk. [46]

In the District Court of the United States
Southern District of California
Central Division

No. 1321 O'C—Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

Be It Remembered that John W. Preston, Oliver O. Clark, and David D. Sallee, heretofore regularly petitioned the above entitled Court that a supplemental decree be made and entered herein, which should determine the amount of their reasonable compensation for services rendered to the plaintiff herein, and the amount of costs and expenses paid by said petitioners on behalf of the plaintiff herein, and for which reimbursement has not been made, and fixing the time for the payment thereof, and the manner of such payment, and the security thereof, and for appropriate ancillary relief in respect thereof, and that said petition, to which reference is hereby made for further particulars, came on regularly for hearing after proper notice to all persons interested therein, of the time and place of such hearing, before the above entitled Court, Honorable W. C. Mathes, judge thereof presiding, in the courtroom of said Court in the United States Post Office Building at the northeast corner of Temple and Spring [47] Streets, in the City of Los Angeles, County of Los Angeles, State of California, on the 12th and 20th days of

February, 1948, and the 8, 29, 30, and 31st days of March, 1948;

And Be It Further Remembered that upon said hearing the petitioners appeared personally and upon their own behalf; the United States of America appeared by Irl D. Brett as Special Assistant to the Attorney General, Lands Division, Department of Justice of the United States of America, and Lee Arenas, the plaintiff hereing, appeared personally, and by said Irl D. Brett as such Special Assistant to the Attorney General, and by John J. Tehaney, as Attorney at Law and Solicitor;

Whereupon evidence both oral and documentary, was offered and received, and the cause was argued and submitted to the Court for decision, and the Court having made and filed its findings of fact and conclusions of law herein and ordered judgment in accordance therewith.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

First: That the petitioner John W. Preston, have and [Mathes, J.] as recover from the plaintiff, Lee Arenas, a reasonable compensation for the services rendered by said petitioner for and on behalf of said plaintiff in the above entitled action, twelve and one-half per cent ($12\frac{1}{2}\%$) of the value of the lands allotted to Lee Arenas and Guadalupe Arenas under the allotment proceedings of 1927 and of the water rights incident to said lands, the same being more particularly described as follows, to wit:

“Lands Allotted to Lee Arenas:

Parcel (a) Homesite: Lot 46, Section 14, Township 4 South, Range 4 East, S.B.B. & M., comprising two (2) acres;

Parcel (b) Irrigated: Tract No. 39, Section 26, Township 4 South, Range 4 East, S.B.B. & M., comprising five (5) acres; [48]

Parcel (C) Desert: $E\frac{1}{2}$ $SW\frac{1}{4}$ $NW\frac{1}{4}$ and $SE\frac{1}{4}$ $NW\frac{1}{4}$ $NW\frac{1}{4}$ and $SW\frac{1}{4}$ $NE\frac{1}{4}$ $NW\frac{1}{4}$ all in Section 26, Township 4 South, Range 4 East, S.B.B. & M., comprising forty (40) acres.

“Lands Allotted to Guadalupe Arenas:

Parcel (a) Homesite: Lot 47, Section 14, Township 4 South, Range 4 East, S.B.B. & M., comprising two (2) acres;

Parcel (b) Irrigated: Tract No. 40, Section 26, Township 4 South, Range 4 East, S.B.B. & M., comprising five (5) acres;

Parcel (C) Desert: $SE\frac{1}{4}$ $NW\frac{1}{4}$ all in Section 26, Township 4 South, Range 4 East, S.B.B. & M., comprising forty (40) acres.”

Second: That said petitioner John W. Preston have and recover from the plaintiff, Lee Arenas, the sum of Two Hundred Fifty-eight and $67/100$ Dollars (\$258.67) heretofore paid by said petitioner for the use and benefit of said plaintiff in said action.

Third: That the petitioners Oliver O. Clark and David D. Sallee have and recover from the plaintiff, Lee Arenas, as reasonable compensation for the services rendered by said petitioners for and on behalf of said plaintiff in said action, ten per cent (10%) of the value of said allotted lands and of the water rights incident thereto.

Fourth: That the payment of the compensation awarded hereby to said petitioners John W. Preston, Oliver O.

Clark and David D. Sallee, and the payment of said sum of Two Hundred Fifty-eight and 67/100 Dollars (\$258.67) heretofore paid by said petitioner John W. Preston for the use and benefit of said plaintiff, be and the same is hereby secured by an equitable lien upon the allotments made to Lee Arenas and Guadaloupe Arenas under the allotment proceedings of 1927 and upon all rights conferred by said allotments, and upon the entire interest and estate of Lee [49] Arenas and his heirs in the lands em-
 [Mathes, J.] , being the lands described above
 in paragraph "First";

braced within said allotments \wedge and upon the entire interest in said lands in the hands of the United States of America, and upon twenty-two and one-half per cent (22½%) of the income therefrom in excess of the reasonable operating expenses of said property; and said equitable lien shall be and continue in full force and effect until the compensation herein and hereby awarded to said petitioners, respectively, and said sum of Two Hundred Fifty-eight and 67/100 Dollars (\$258.67) paid by said petitioner John W. Preston for the use and benefit of said plaintiff, shall be fully paid and satisfied.

Fifth: That the plaintiff be, and he hereby is, allowed and granted a period of three months from and after the
 this [Mathes, J.]
 entry of \wedge judgment ~~and decree herein~~ within which to satisfy and discharge the equitable lien herein and hereby allowed and granted to the petitioners, and any and all further proceedings by the petitioners for the enforcement of said lien be and the same are stayed for said period of three months from and after the entry of judgment and decree herein.

Sixth: The Court hereby retains jurisdiction over this action, and the parties thereto, and the subject matter thereof in order to act upon and determine the time when, and the manner in which, and the method, or methods whereby the payment of all or any part of the compensation and reimbursement for expenses hereby awarded to the petitioners shall be made or further secured, and in order to require and compel the satisfaction and discharge, or the enforcement of the equitable lien herein and hereby awarded to said petitioners; and if necessary, for the determination by the Court of the money value of the legal services rendered and performed by the petitioners for and on behalf of the plaintiff in this action, and for the appointment of a Receiver or Commissioner to effectuate the judgment and decree herein, in [50] accordance with the equitable jurisdiction, practice and procedure of this Court.

Seventh: That the parties to this proceeding pay their own costs, respectively, incurred therein.

Dated this 30 day of April, 1948.

WM. C. MATHES

Judge

Approved as to form as provided by local Rule 7: April 30th, 1948. Irl D. Brett, Special Assistant to the Attorney General.

Judgment entered May 3, 1948. Docketed May 3, 1948. CO Book 50, Page 491. Edmund L. Smith, Clerk, by Louis J. Somers, Deputy.

[Endorsed]: Filed May 3, 1948. Edmund L. Smith, Clerk. [51]

[Title of District Court and Cause]

NOTICE OF APPEAL

To the Clerk of the Above Entitled Court, and to Messrs.
John W. Preston, Oliver O. Clark, David D. Sallee,
Attorneys at Law, 712 Rowan Building, 458 South
Spring Street, Los Angeles 13, California:

Notice Is Hereby Given that Lee Arenas hereby appeals
to the United States Circuit Court of Appeals for the
Ninth Circuit from the final judgment made and entered
herein on or about May 3rd, 1948, in favor of John W.
Preston, Oliver O. Clark, and David D. Sallee, and from
the whole thereof.

Dated this 2nd day of June, 1948.

JOHN J. TAHENY

625 Market Street

San Francisco 5, California

Attorney for Appellant Lee Arenas

[Endorsed]: Filed & mld. copy to John W. Preston,
Jun. 2, 1948. Edmund L. Smith, Clerk. [52]

[Title of District Court and Cause]

ORDER FIXING TIME FOR FILING BOND ON
APPEAL AND EXTENDING TIME FOR FIL-
ING RECORD ON APPEAL AND FOR DOCK-
ETING APPEAL

Application having been made by Lee Arenas for an order fixing time for filing bond on appeal and extending time for filing record on appeal and for docketing appeal, and good cause appearing,

It Is Hereby Ordered that the time for filing the record on appeal with the United States Circuit Court of Appeals for the Ninth District, and for docketing the appeal with said court, be and the same is hereby extended to August 31st, 1948; and it is further ordered that Lee Arenas be and he is hereby allowed to file a bond on appeal in the sum of \$250.00 at any time not less than five days before the filing of such record and the docketing of such appeal in said court.

Done in Open Court this 1st day of July, 1948.

WM. C. MATHES

Judge of the United States District Court

[Endorsed]: Filed Jul. 2, 1948. Edmund L. Smith,
Clerk. [53]

[Title of District Court and Cause]

NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America and Lee Arenas hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment made and entered herein on May 3, 1948, in C. O. Book 50 at page 488, in favor of John W. Preston, Oliver O. Clark and David D. Sallee, and from the whole thereof.

Dated: June 30, 1948.

JAMES M. CARTER

United States Attorney

IRL D. BRETT

Special Assistant to the Attorney General

By Irl D. Brett

Attorneys for Appellants, United States of
America and Lee Arenas

[Endorsed]: Filed & mld. copy to John W. Preston,
Jun. 30, 1948. Edmund L. Smith, Clerk. [54]

[Title of District Court and Cause]

STATEMENT OF POINTS ON APPEAL

The United States of America and Lee Arenas, Appellants in the above-entitled cause, submit the following statement of points which will be relied upon on appeal:

1. The Court erred in denying the Government's motion to dismiss the petition and order to show cause.

2. The Court erred in finding, concluding and adjudging that appellees were entitled to an equitable lien upon the restricted allotments involved and the income derived therefrom to secure the payment of attorneys' fees and moneys advanced as costs and expenses of suit, and in failing to find and conclude that it was without jurisdiction to impose such a lien. [55]

3. The Court erred in retaining jurisdiction in order to compel the satisfaction, discharge or enforcement of the equitable lien, and to appoint a receiver or commissioner to effectuate the judgment.

JAMES M. CARTER

United States Attorney

IRL D. BRETT

Special Assistant to the Attorney General

By Irl D. Brett

ROGER P. MARQUIS

JOHN C. HARRINGTON

Attorneys, Department of Justice, Washington, D. C.

Attorneys for Appellants, United States of America
and Lee Arenas

Received copy of the within Statement of Points on Appeal this 10 day of September, 1948. John W. Preston, Oliver O. Clark, David D. Sallee, by John W. Preston, Jr.

[Endorsed]: Filed Sep. 10, 1948. Edmund L. Smith, Clerk. [56]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 59, inclusive, contain full, true and correct copies of Petition for Supplemental Decree for Attorneys' Fees and Expenses Advances, for Sale of Property and for Appointment of Receiver; Order to Show Cause; a Special Appearance of and Motion to Dismiss by The United States of America; Affidavit of Irl D. Brett; Appearance; Order Denying Dismissal; Answer to Petition and Order to Show Cause in re Supplemental Decree for Attorneys' Fees and Expenses Advanced, for Sale of Property, and for Appointment of Receiver; Minute Order Entered February 10, 1948; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal of Lee Arenas; Order Fixing Time for Filing Bond on Appeal and Extending Time for Filing Record on Appeal and for Docketing Appeal; Notice of Appeal of Lee Arenas and United States of America; Statement of Points on Appeal and Designation of Record on Appeal which, together with copy of reporter's transcript of proceedings on March 31, 1948, transmitted herewith, constitute the record on the appeals of Lee Arenas and United States of America to the Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 23 day of September, A. D. 1948.

(Seal)

EDMUND L. SMITH
Clerk

By Theodore Hocke
Chief Deputy

[Title of District Court and Cause]

Honorable William C. Mathes, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Wednesday, March 31, 1948

Appearances:

For Petitioners: John W. Preston, Esquire, Oliver O. Clark, Esquire, and David D. Sallee, Esquire, in Pro Per.

For Respondent Lee Arenas: John J. Taheny, Esquire.

For Respondents United States of America and Lee Arenas: Irl D. Brett, Esquire.

Los Angeles, California, Wednesday, March 31, 1948

2:00 P. M.

The Court: Gentlemen, your arguments have been most helpful to me, I did not think on Monday that by the time you were concluded I would feel clear enough on this matter to decide it, but I feel perfectly clear about it now and there is no occasion to write an opinion on it. If it goes to the upper courts they will take that privilege.

I am sure Mr. Brett agrees and would be the first to say that the Government of the United States can always afford to be fair with its citizens, and that includes attorneys as well as Indians and others. So anything I say which might imply criticism of any action or inaction on the part of the Secretary of the Interior—and I do not have any intention of saying anything at this time—but, if I do, it has no weight in this decision.

As I see the matter, in the first place, it calls for an interpretation of Section 345, Title 25 of the United States Code; and, as I read it in relation to this proceeding, by Section 345 the United States consents to the

jurisdiction of this court in equity in a proceeding such as this.

I appreciate that the sovereign cannot be sued without its consent and that consent should be strictly construed. But once given that consent is to be liberally construed to effectuate that purpose. The considerations governing such [2*] interpretation of sovereign consent are well discussed in the opinion of Mr. Justice Reed in the case of *United States v. Shaw*, 309 U. S. 495, particularly at pages 500-502, possibly et seq.

This being an equitable action, then, as I interpret it, and the Government having consented to the invocation of the equity jurisdiction of this court, I want to consider at the outset the scope of that jurisdiction.

Equity jurisdiction, as conferred by the Constitution on the Federal Courts, imposes the duty to adjudicate according to equitable rules and principles recognized by the Court of Chancery in England at the time our Constitution was formed. The Supreme Court discusses that in numerous cases. One of the recent cases is *Atlas Insurance Co. vs. W. I. Southern, Inc.*, 306 U. S. 563, at 568.

No such broad jurisdiction is conferred on Federal Courts in actions at law. But here we are dealing, as I say, with a suit in equity and with a proceeding in that suit in the nature of a supplemental bill for the taxation of costs as between solicitor and client.

As I have said earlier in this proceeding, that power, time-honored and inherent power, of courts of equity or courts of chancery at the time of the adoption of our Constitution and prior to that, is discussed in the scholarly

*Page number appearing in original Reporter's Transcript.

opinion of Mr. Justice Frankfurter in *Sprague vs. Ticonic Bank*, 307 U. S., [3] particularly at pages 164 et seq.

Of course, this is not a *Ticonic Bank* case. This is a case involving what I would construe to be a fund (i. e. the land represented in the allotment) an interest in it. And Lee Arenas' interest is akin to the interest Barnett had in the fund in *U. S. vs. Equitable Trust Co.*, 283 U. S. 378. In my view the same considerations that prompted the court there, as a court of equity, to assess fees as between solicitor and client, apply here.

The only distinction of any consequence between the problem at bar, as I see it, and the problem in the *Equitable Trust Company* case is the basis of the court's jurisdiction or power to bind the United States. In the *Equitable Trust* case, as has been argued, there was no statute under which the United States had consented to be sued in such an action as that action by Barnett, the Indian, through his next friend, against the *Equitable Trust Company*, and more particularly against the *American Baptist Home Mission Society*. The United States intervened, and consent there was, as Mr. Brett has pointed out, construed to arise, as it did, in such cases as *The Siren*, 7 Wall 152, and *U. S. vs. The Thekla*, 266 U. S. 328, and others which are cited in 283 U. S. at page 746. There are later cases to the same effect, that where the United States itself invokes the jurisdiction of the court, it to that extent consents in an equitable proceed- [4] ing that complete justice be done as is the custom. Of course equity, having taken jurisdiction for one purpose, will retain that jurisdiction to do complete justice between the parties.

So I find there is, for those reasons, jurisdiction under 25 U. S. C. Sec. 345 to bind not only Lee Arenas but the

United States, as a party to the main action in this proceeding, by whatever determination this court makes in the nature of an award between solicitor and client.

I mentioned the considerations prompting the award in the Equitable Trust Company case. They are also involved in *U. S. vs. Anglin & Stevenson, et al.*, 145 Fed. (2d) 622, a Tenth Circuit case decided in 1944. So that brings us to the question of what costs and what fees should be assessed as between solicitor and client in this case.

Before I proceed, I want to say again that in determining this action under Section 345 of Title 25 to be an equitable proceeding, I am relying in part upon the decision by Mr. Justice Jackson in *Arenas vs. United States*, 322 U. S. 419, at page 430, and the cases cited there, that case I mentioned yesterday, I believe, namely, *Hy-Yu-Tse-Mil-Kin vs. Smith*, 194, U. S. 401; and *U. S. vs. Payne*, 264 U. S. 446, I believe there are other decisions where the point was not expressly raised, in which the very nature of the action and the relief granted demonstrated that the equitable powers [5] of the court were invoked in a proceeding under Section 345.

So now the question of what costs should be assessed. If there is a contract between the solicitor and the client that fixes an actual recovery or fixes the rate of recovery, of course, the court will take that contract as governing the maximum amount as long as the amount appears to be fair and equitable. If it were an inequitable contract, a court of equity would not consider itself bound to heed an arrangement, even between the parties, which is inequitable as to amount.

It seems to me that under Section 85 of Title 25 this contract of November 20, 1940, not having been made with

the consent of the United States, is void. I believe the Assistant Commissioner had the same idea in mind, although he does not say so, in the letter which was introduced in evidence here from the Assistant Commissioner to Mr. Sallee declining to take any action on the contract. As I see it, the contract clearly deals with, or, in the language of Section 85, Title 25, relates to tribal property in the hands of the United States, or did at the time it was made. However that may be, even were it not for that consideration, the 1940 contract was made subject to the express approval of the Commissioner of Indian Affairs and the Secretary of the Interior. In view of their refusal to have anything to do with it, it is very difficult to know how that contract could [6] ever have been enforced or ever have been carried out.

If it were not for the subsequent conduct of the parties, I would be prepared to say that the contract being made subject to that condition, and that condition never having come to pass, the contract never came into effect. But, as has been pointed out in argument by Mr. Brett, I believe, or Mr. Taheny, these conditions were for the benefit of the parties and the parties treated the contract as being in effect. The petitioners here allege it was in effect up to the time in 1945 when it was superseded, and the other party to the contract, Lee Arenas, contends it is still in effect. So the parties have obviously waived the performance of these conditions.

Even if that were not so, it would seem to me that Mr. Sallee, and Mr. Clark who was with him in all these matters, would be estopped now to assert that their services were worth more than the ten per cent or one-tenth specified in the contract. They placed that valuation upon their services at the time. And there is no showing here

that they, having obligated themselves to render those services (assuming the validity of the contract now), ever gave any consideration for a modification.

Without going into a discussion of those attorney fee cases in California, and getting to the point of whether or not the contract was superseded, I say it seems to me it was [7] void in the first instance under Section 85, but the result would be the same in this case, because I am not here to enforce the contract; I am here to take a measure and find an equitable compensation and an equitable taxation of fees between solicitor and client, and this contract is merely one bit of evidence to aid me in determining what is fair and equitable between the parties.

So I find that petitioners David D. Sallee and Oliver O. Clark are estopped to claim any greater fee than ten per cent of the value of the lands embraced in the allotment to Lee Arenas.

The Petitioner, John W. Preston, is not in that position. I feel that Mr. Brett made an accurate analysis of that situation. Petitioner Preston was in no way bound by the 1940 contract, assuming it was in force. If it was in force, then petitioners Clark and Sallee were obligated to perform the services without increased remuneration, and the attempt in the 1945 contract to increase that remuneration to them for the same services was ineffective.

Not so as to Petitioner Preston. His employment was on a quantum meruit basis and his services were rendered on a quantum meruit basis, and I find that he is entitled to 12½ per cent of the value of the lands involved in the allotment as reasonable compensation for his services, and to reimbursement to the extent of \$258.67 by reason of out-of-pocket costs advanced on behalf of Lee Arenas in the performance of [8] his services.

Accordingly I declare a lien upon the allotment and upon all rights conferred by the allotment, and upon the entire interest of Lee Arenas and his heirs in the land embraced within the allotment in the hands of the United States, and upon the rents, issues, profits and income derived from all or any part of the lands embraced within the allotment, and the proceeds of any land embraced within the allotment in the hands of the United States and, as well, in the hands of Lee Arenas and his heirs, to the extent of an undivided one-tenth interest as to petitioners Oliver O. Clark and David D. Sallee jointly in their favor, and to the extent of an undivided one-eighth interest in favor of petitioner John W. Preston.

Mr. Brett: Would your Honor permit an interruption merely for correction?

The Court: Yes.

Mr. Brett: I think you have overlooked the costs, and I think that lien of Judge Preston's would run for his costs, one-eighth plus his costs, as stated.

The Court: Yes, Thank you. I mentioned that previously but I had omitted it in impressing the lien.

And a further lien in his favor to the extent of the personal advance of \$258.67 by Petitioner Preston. At the time you interrupted I was thinking of the costs of this [9] proceeding.

I find it would be equitable to permit both parties to bear the cost of these proceedings.

The court hereby retains such jurisdiction as may be necessary to enable the court to act upon and determine the time when, and the manner in which, and the method whereby payment of all or any part of the compensation and reimbursement for expenses hereby awarded shall be made or further secured.

In that connection I hope it will not be necessary to go to that expense, but I will entertain an application for the appointment of a receiver.

Mr. Preston: I do not know as I understood your Honor fully as to the extent of the lien.

The Court: I have declared a lien upon the allotment, upon all rights conferred by the allotment, upon all the lands embraced within the allotment, upon the entire interest in the land in the hands of the United States, and upon all the rents, issues, profits, income and proceeds derived from the land in the hands of the United States.

In other words, it is my view that the court, having jurisdiction under 25 U. S. C. Sec. 345 to render the relief in the main action, has jurisdiction to affect that land, and that the United States has consented to the exercise of full equitable jurisdiction in this action. That is my view of it.

[Endorsed]: Filed Sep. 10, 1948. Edmund L. Smith, Clerk. [10]

[Endorsed]: No. 12046. United States Court of Appeals for the Ninth Circuit. Lee Arenas, Appellant, vs. John W. Preston, Oliver O. Clark and David D. Sallee, Appellees. United States of America and Lee Arenas, Appellants, vs. John W. Preston, Oliver O. Clark and David D. Sallee, Appellees. Transcript of Record. Appeals From the District Court of the United States for the Southern District of California, Central Division.

Filed September 24, 1948.

PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the Ninth Circuit.

[Title of District Court and Cause]

Honorable William C. Mathes, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Tuesday, February 10, 1948

Appearances:

For Petitioners in Pro Per: John W. Preston, Esquire; Oliver O. Clark, Esquire, and David D. Sallee, Esquire.

For Respondents: Jerry Giesler, Esquire; Meyer M. Willner, Esquire, and H. L. Thompson, Esquire.

(Substituted for Messrs. Giesler, Willner and Thompson): John H. Taheny, Esquire, and Horace A. Dibert, Esquire. Irl D. Brett, Esquire, Spec. Asst. to the Attorney General of the United States.

* * * * *

Mr. Brett: You mean the present value?

The Court: Yes. It would be very difficult to show me that it would be wise for me to attempt to make an award predicated upon the present value of this property. If an award is made, I would be inclined to make it on the basis of percentage, which would rise or fall with the valuation of the property.

Mr. Brett: That is true. But, of course, then as an incident would have to be what is the value that we have to get to. I mean that is the cornerstone of whatever we are taking a percentage of.

The Court: Yes; it is helpful to know whether we are dealing with a million dollars or a thousand dollars. That is very helpful in determining a percentage. [127]

* * * * *

L. R. MARTINEAU, JR.,

called as a witness by petitioners, being first sworn, was examined and testified as follows:

* * * * *

Direct Examination

By Mr. Preston: [175]

* * * * *

Q. I see. Well, Mr. Martineau, taking into consideration the nature of the questions of law involved in this case, as disclosed by your examination of the record on file herein, and taking into consideration the work performed by petitioners, as disclosed by this examination, and assuming the statement of facts in Petitioners' Exhibit 4-A are true, and further assuming that the oral testimony presented in your hearing today is true, have you an opinion as to the reasonable value of the services performed herein collectively by the petitioners, John W. Preston, Oliver O. Clark, and David D. Sallee? Answer that yes or no. A. I have.

Q. Will you please give us the benefit of your opinion? [186] A. In my opinion—

Mr. Taheny: Your Honor, might I say just for the sake of the record that it is understood that an objection will run to this testimony on the ground that a quantum meruit has no relevancy to the proceeding. In other words, we are not assuming that the quantum meruit contract of February 1st, 1945 has any validity or any room in this case.

The Court: Your objection is that it is irrelevant and immaterial?

Mr. Taheny: It is on that ground, your Honor.

(Testimony of L. R. Martineau, Jr.)

The Court: The objection is overruled.

The Witness: May I have the last question read, please?

Mr. Brett: May I add to the objection that it is incompetent upon the ground that a contract, as made by an attorney, fixing a fixed fee, the quantum meruit then does not apply and the matter is incompetent.

The Court: As I understand, then, there is no objection to the qualifications of the witness, nor is there objection to the question propounded as such, that is, to the form of the question?

Mr. Taheny: That is correct.

Mr. Brett: I wanted to add, in addition to the materiality, incompetency because of the fact there is a fixed contract.

The Court: There is no objection on the ground the [187] question assumes facts not in evidence?

Mr. Taheny: What is that, your Honor?

The Court: There is no objection on the ground the question assumes facts not in evidence?

Mr. Taheny: No; there is not.

The Court: Merely the objection it is incompetent, irrelevant and immaterial upon the grounds you gentlemen have stated?

Mr. Taheny: That is right. That is right, your Honor.

The Court: The record will so show and the objection is overruled.

The Witness: If the court please, may I have the question read?

The Court: The question calls for an expression of your opinion.

(Testimony of L. R. Martineau, Jr.)

Mr. Preston: Yes. You answered the question "yes," and then my last question was: Give us the benefit of your opinion, if that is the question you are interested in.

A. If I assume the valuations which have appeared in evidence at this hearing—

The Court: You just state a figure, if you will, please, assuming the property is worth a million dollars or thereabouts.

A. Assuming the property to be worth a million dollars or from one million up to \$1,047,000, as the two [188] witnesses have testified, and if I am now to state a figure in dollars, I believe that a fee of \$275—

Mr. Preston: 275 what?

A. \$275,000 as an award to the petitioners in this matter now on hearing would be a reasonable and a moderately reasonable fee.

And if, on the contrary, I assume from the discussions which I have heard and the remarks of your Honor, that there is a question yet to be determined, not before me, of valuation, and a substantially lower valuation might be determined by the court and therefore a percentage basis should be used as a means by which the court might determine a reasonable compensation, then in my judgment that percentage should approximate twenty-seven and one-half per cent, and in no event should be lower than 25 per cent, might be as high as thirty-three and one-third per cent, and would not be unreasonable if it were 50 per cent.

I put the question, if I may explain, in the alternative in the light of the studies which I have made of this case and this record, and in the light of the testimony

(Testimony of L. R. Martineau, Jr.)

which has been given here, in order to facilitate your Honor in a determination which I know from experience in any case of this sort is difficult.

The Court: Have you assumed that the compensation of the attorneys, the petitioners here, is entirely dependent [189] upon the outcome of this case?

The Witness: I have. But I should like to add to that answer, if the court please, that I, in this matter, as usual, referred to Canon No. 12, I believe it is, of the Code of Ethics of the American Bar Association, which, as I recall it, specifies six factors which normally should be considered by counsel in attempting to arrive at a reasonable fee and, to supplement that, refreshment of my memory by looking over certain notes and memoranda I had respecting fees which involved, in all probability, 10 or a dozen other factors.

Limiting my answer for the moment to matters mentioned in the Canon of the American Bar Association, the fact that compensation is taken on a contingency is one of the important factors to be considered. But I should add here that all factors under the holdings of the courts need not be given by a witness as having equal weight under the circumstances in any particular case.

The Court: I take it you have taken into consideration the nature of the matter, the amount involved, the complexity of the problem?

The Witness: I have.

The Court: The responsibility imposed, the time spent, and the results achieved?

The Witness: I have taken all of those factors into [190] consideration.

(Testimony of L. R. Martineau, Jr.)

The Court: As well as the fact that all compensation—you have assumed all compensation to be contingent?

The Witness: I have.

The Court: Now, if you assume that compensation is not contingent what would be your opinion, both in dollars and in percentage?

The Witness: If I assumed that the compensation were not contingent and that the clients were financially able to pay what members of the profession would call a reasonable fee, I would not make a reasonable fee at the conclusion of the litigation and efforts made by counsel in this case on the 27th of last August at very much less than \$250,000, if the court please, even if there were a fixed ability to pay.

The Court: That is, considering all the factors you have mentioned, except—

The Witness: The contingency.

The Court: —except the contingency. What would you say would be a reasonable percentage of the recovery, assuming that the fee was not contingent?

The Witness: As I stated a moment ago, I think that the recovery might well have been one-third to a half. But I might explain that answer, if your Honor desires, by saying that from my study of the records in this case I [191] would assume that Lee Arenas was, to use Judge Preston's phrase, put upon the country; that he would not have any greater or lesser rights than any other fully qualified citizen of the United States or than I myself might have if I had to go to the Bar with a problem such as his, making no distinction either in his favor or against him because of his being a member of the Mission Band of Indians, in which event I would

(Testimony of L. R. Martineau, Jr.)

have found that my fellow members of the Bar would have said to me: That you may expect this case, taken on a contingency, to be 25, 33-1/3, or 50 per cent, depending upon the stage at which it may be concluded, which is well familiar to all of us.

The Court: If not taken upon the contingency, what percentage do you think the petitioners should be entitled to as reasonable fees for their services?

The Witness: I would think that if the case were not taken on a contingency, that a reasonable fee ought to provide for a base fee. By that I mean a fee not less than a certain sum plus the reasonable value of services.

If I did not answer your question, your Honor, I perhaps did not understand it.

The Court: Suppose they were not contingent, but upon the completion of the litigation, why, the client said: "Well, gentlemen, you have recovered this property for me. That is all I have. I am willing to give you a share of [192] what you have recovered"?

The Witness: Well, if that were true, then, your Honor—

The Court: What would be that percentage, then?

The Witness: I would not base the fee upon a percentage. I would have to take into consideration the other five factors of the American Bar Association over and above the contingency, and I might want to take into consideration some of the other factors established by the court.

The Court: Perhaps you did not understand my question. I am assuming that you are taking into consideration all other factors which you have mentioned.

(Testimony of L. R. Martineau, Jr.)

The Witness: Then I would answer you—

The Court: But we will assume that the compensation is not contingent upon recovery.

The Witness: All right. If I now understand your statement correctly, I would say that it would be upon a percentage plus some other figure. I tried to answer that by saying it would be plus some basic compensation, with a percentage of the recovery of property or a percentage based upon the amount and success of the litigation, depending upon the success of the litigation, and that percentage, I think, would have to be analyzed in the particular case.

Now, in this particular case, if the court please, I have not made any such computation. [193]

* * * * *

T. B. COSGROVE,

called as a witness by petitioners, being first sworn, was examined and testified as follows:

* * * * *

Direct Examination

By Mr. Preston: [234]

* * * * *

Q. That is the case. Well, Mr. Cosgrove, if you were to assume the facts set forth in the Petitioners' Exhibit 4-A to be true and correct, and add to that your

(Testimony of T. B. Cosgrove)

research of the exhibits mentioned here in 10, 10-A and -B, 11-A, 11-B, 12-A, -B, -C, 13-A, -B, -C, and -D, and you applied to them the rules of law that are set forth in the authority that you refer to to the facts as detailed by these documents that you have examined, and couple that with your own experience and judgment as a trial lawyer in this State, have you an opinion as to what would be or should be the reasonable value of the services performed by petitioners in this case known in the record as Arenas vs. The United States of America?

A. Yes; I do.

Q. Have you any particular form in which you prefer to express your opinion, that is to say, in dollar value or in percentage of property recovered? [246]

A. I cannot express it in dollar value. I can express it only in percentage.

Q. Will you please give us the benefit of your opinion?

A. 27½ per cent.

Q. 27½ per cent. You have given that idea much thought, have you not, Mr. Cosgrove?

A. I have worked on it, I would say, several days.

Q. Several days. And that is the conclusion you reach. You said you could not put a dollar value on it. Why is that true?

A. Because the value, as I understand it, is entirely uncertain, and in this statement which I have here it says the value of the lands recovered is considerably in excess of \$1,000,000. That might mean 10,000,000.

(Testimony of T. B. Cosgrove)

Q. I see. If it was in excess of a million you would make it $27\frac{1}{2}$ per cent?

A. Well, I thought the value was a decidedly uncertain factor and I would not want to undertake any statement about what the value of the services were, expressed in dollars and cents.

Q. Then, if this court finds that value of the property to be much or little, your percentage would stand as a single item or a calculation, would it?

A. That is correct. The figure I arrived at is not contingent upon whether it is worth more than a million or [247] less than a million. [248]

* * * * *

Cross-Examination

By Mr. Taheny: [274]

* * * * *

Q. I say, you have read and familiarized yourself in a general way with the contents of the briefs which were filed in the Circuit Court of Appeals in connection with the appeal of Lee Arenas from the summary dismissal?

A. Well, I will say yes, but permit me to say that when I examined the briefs I did not examine the briefs like a judge of the Circuit Court of Appeals would who would be called upon to write an opinion, because I knew the opinions had already been written and the case had been decided. I examined the briefs only for the purpose

(Testimony of T. B. Cosgrove)

of determining what the point was that was presented; and then I examined the decisions of the court very carefully to see how the court had decided these issues of law and fact for the purpose of determining, not how the case should be decided, but the extent and the character of skill required to present the matter anew to the Circuit Court of Appeals and to the Supreme Court. So if you have in mind the purpose for which I examined the briefs, the answer would be yes. [279]

Q. Well, did you notice any difference, any essential difference, in the points presented in the appeal brief in the Circuit Court of Appeals and the points presented in the petition for certiorari filed in the Supreme Court of the United States, the petition that was filed about October 29, 1943, that is the first petition for certiorari in the Arenas case?

A. I noticed—I am not certain about dates; I do not carry dates in mind—but I think that there isn't any fundamental or clearly ascertainable distinction in the points that were presented originally to the Circuit Court of Appeals and to the Supreme Court of the United States in the first appeal in the Arenas case. The difference is in the manner in which they were presented and the success that accompanied the presentation of them. [280]

* * * * *

The Court: Let us assume the value of the land is \$100,000.

The Witness: It would still be 27½ per cent.

(Testimony of T. B. Cosgrove)

The Court: If it was \$50,000 would it still be the same?

The Witness: Still be the same; yes.

The Court: And if it were a million dollars?

The Witness: It would still be the same.

The Court: If Mr. Sallee or Mr. Clark or Judge Preston, alone, had done this work and accomplished these results instead of three of them doing it together, would your opinion be the same?

The Witness: I don't know. I did not consider if one had done it alone. I considered the object of the proceeding; I considered the difficulties that they were faced with; that they encountered these preceding decisions; I considered the work that they did; I considered the result they obtained; and I considered it as a community venture.

The Court: Let us assume that this same work was done by some attorney, take any name you please, just a name, and these same results accomplished, would your opinion still be the same?

The Witness: It is my experience, Judge, that where two and three men work on a case, and particularly where their effort is accompanied with success, conspicuous [289] success, that they are entitled to more than if there had been only one. [290]

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RESPONDENTS' CASE IN CHIEF.

* * * * *

LEE ARENAS,

the plaintiff and a respondent herein, called as a witness by respondents, being first sworn, was examined and testified as follows:

* * * * *

Direct Examination

By Mr. Taheny:

Q. Your name is Lee Arenas? A. Yes, sir.

Q. And you are a party to this proceeding?

A. What?

Q. You are a party to this proceeding?

A. Oh, yes, yes.

Q. How old are you, Mr. Arenas?

A. Oh, about 71, 72.

Q. I am handing you a contract which is in evidence [291] as Petitioners' Exhibit 7. It purports to bear your signature. I will ask you whether it does have your signature? A. I don't know a thing about it.

Mr. Preston: What is his answer?

(Answer read by the reporter.)

Q. By Mr. Taheny: I am also showing you another contract, which is marked Petitioners' Exhibit 8 for identification, which appears to be identical except for the fact that it names your wife as a party, instead of yourself, and it purports to be signed by Marian Therese Arenas, your wife. I will ask you whether you ever saw that contract before? A. What is that? What does it say?

(Testimony of Lee Arenas)

Q. It is a contract, power of attorney, by Marian Therese Arenas to David D. Sallee, John W. Preston, and Oliver O. Clark, bearing date of February 1, 1945. Did you ever see that paper? A. No.

Mr. Taheny: Will it be all right if I stand close to the witness, your Honor? He has difficulty understanding me, he tells me.

The Court: Yes.

Q. By Mr. Taheny: Mr. Arenas, I now show you a document purporting to be a document or agreement signed [292] on November 20, 1940, between you and David D. Sallee. A. Yes; I did.

Q. Do you recall signing that contract I am showing you? What purports to be your signature, is that your signature? A. Yes.

Q. This last contract, which is marked Petitioners' Exhibit No. 6, provides for a fee of 10 per cent.

A. Yes, sir.

Q. 10 per cent. A. 10 per cent.

Q. Did you understand at the time you signed that that it was to be for 10 per cent? A. Yes, sir.

Q. Now, at any time thereafter did Mr. Sallee or Mr. Clark or Mr. Preston or anybody else inform you that there was to be a different fee or a higher fee for the work done in this case in your behalf?

A. They never say nothing about me—about it to me.

Q. Did Mr. Sallee at any time act as your attorney in another case that was filed against you by the Government after the present suit was filed?

A. Well, I am always depending on him, Mr. Sallee.

Mr. Preston: What is the answer, Mr. Reporter?

(Answer read by the reporter.) [293]

(Testimony of Lee Arenas)

Q. By Mr. Taheny: Mr. Arenas, do you remember being served with some suit papers in a suit brought against you and a number of other Indians?

A. Yes.

Q. 10 or 15 Indians? A. Yes.

Q. A suit in ejectment?

A. In ejectment, I think.

Q. That was a suit filed about 1943?

A. Something like that; yes.

Q. And at that time did Mr. Sallee agree to represent you in connection with that particular suit?

A. He took that paper and he was going to defend me, on me, for me.

Q. And did you pay him any money for his agreement to defend you in that particular suit?

A. I don't remember. I had been giving him money for something else.

Q. Was your wife Marian Therese Arenas also named as a defendant in that particular suit by the Government?

A. Maybe she knows about it. I don't know anything about it.

Q. No. I say, was she also served with suit papers in that particular case?

A. I think she told me; yes. [294]

Mr. Taheny: Your Honor, I borrowed this letter from Mr. Brett. He said that he has not shown it to opposing counsel. I am asking permission to do so now.

Q. Mr. Arenas, I now show you a letter on the letter-head of "David D. Sallee," dated November 7, 1944, and signed by him or purporting to be signed by him, and addressed to "Mr. and Mrs. Lee Arenas, Palm Springs, California." I will ask you if you remember receiving that

(Testimony of Lee Arenas)

letter from Mr. Sallee on or about that date? What is your answer?

A. I know his name, but I think my wife knows all about the letter.

Q. Do you recognize the letter yourself?

A. Yes.

Mr. Taheny: We would like to offer this into evidence, your Honor.

Mr. Preston: I have no objection, except that it is immaterial. It relates to expenses.

Mr. Taheny: And also, I will ask counsel for—I will first make this offer. I have offered it in evidence, your Honor.

The Court: Objection is overruled. The document is received as Respondents'—

The Clerk: D, your Honor.

Mr. Taheny: I would also like to ask counsel if they will stipulate that this ejectment suit to which I referred [295] in my question was filed October 4, 1943, in this court, and the number of it is 3184-O'C?

Mr. Preston: I will so stipulate. I have some knowledge of it.

Mr. Taheny: And may the record in that proceeding be deemed incorporated herein by reference?

Mr. Preston: Well, I have objection to it. I do not know why it should be admitted, but if the court wants to hear it, it is all right with me.

The Court: How would it be material?

Mr. Taheny: We propose to show by other testimony which will tie up with Mr. Arenas' testimony that these papers that were signed in 1945 were signed by Mr. Arenas and Mrs. Arenas, as well as by other Indians, in

(Testimony of Lee Arenas)

contemplation of defense to this action, and with no contemplation then that they refer to the present proceeding of Arenas versus the United States.

The Court: If you have the action identified is it necessary, for your purposes, to have the record of the action here?

Mr. Taheny: Well, perhaps not, if we will do this, your Honor: I would like to say that the answer was not filed for a considerable period of time, not until December 12, 1944. The action was filed in 1943.

The Court: I will overrule the objection and receive [296] the file. What was that case number?

Mr. Taheny: It is No. 3184-O'C.

The Court: 3184-O'C is received into evidence by reference as Respondents' Exhibit—

The Clerk: E, your Honor.

The Court: E.

Q. By Mr. Taheny: Mr. Arenas, at any time at all were you informed that it will be necessary to associate Judge Preston in this case? A. No; I never know.

Q. Were you at any time informed that it will be necessary for you to pay a higher fee in order that Mr. Clark and Mr. Sallee will get another attorney to work with them on the case?

A. Never knew anything about it.

Mr. Taheny: That is all, your Honor.

Mr. Preston: Is that all?

Mr. Taheny: Yes, sir.

(Testimony of Lee Arenas)

Cross-Examination

By Mr. Preston:

Q. Mr. Arenas, you knew that I tried your case for you, did you not?

A. I don't know nothing about it but Therese knows about it.

Q. You testified as a witness on the trial of your [297] case, didn't you? A. Before Sallee, yes.

Q. Before Judge O'Connor. Do you remember being on the witness stand in Judge O'Connor's court?

A. Judge O'Connor's court, with Sallee. I have Sallee right there with me.

Q. I am asking you if you were in the court room and testified as a witness when Judge O'Connor tried your case? A. Yes.

Q. Didn't I examine the witnesses?

A. I don't remember.

Q. Didn't I examine you?

A. I don't remember.

Q. You don't remember? A. No.

Q. Didn't I put you on the stand as a witness and ask you some questions in front of Judge O'Connor?

A. How long ago is that?

Q. Well, 1945, along about the last day of January.

Mr. Taheny: January 30, 1945.

Mr. Preston: January 30, 1945.

A. Well, in that case, you know, Sallee ought to know all about it. I don't know nothing.

Q. I am not asking you about Sallee at all. I am asking you if I did not call you to the witness stand and [298] ask you questions and you gave your answers on your case? A. Yes.

(Testimony of Lee Arenas)

Q. What? A. I say, "yes."

Q. You said, "yes." Well, didn't I examine all witnesses that took the stand in that case?

A. I don't know nothing about it.

Q. Oh, yes. There is no laughing about it, Lee. You remember Mr. Wadsworth taking the witness stand?

A. Mr. Wadsworth, yes.

Q. Didn't I ask him the questions? A. Yes.

Q. I did. And you knew I was helping you, didn't you? A. I know you was in there; yes.

Q. Didn't you know that before the day you came up here to try the case? A. Who is that?

Q. Didn't you know that then? Didn't you know that I helped you in the Supreme Court of the United States?

A. Yes; before the Judge. Yes.

Q. You knew that I went to Washington?

A. That is what you said; yes.

Q. What? A. That is what you said.

Q. What I said? [299] A. Yes.

Q. And you knew you won the case at Washington, didn't you? A. That is what you said.

Q. You knew I was helping, didn't you?

A. Yes.

Q. Did you ever tell me to get out of the case, that you didn't want me? A. I never did. I never did.

Q. You never did. You liked what I was doing, didn't you? A. Oh, yes. Why not?

Q. Why not? That is what I say. Then after I tried the case for you here and you were on the witness stand in Judge O'Connor's court, you went down and signed this paper, didn't you? A. I don't remember.

(Testimony of Lee Arenas)

Q. Can you sign your name? Can you write your name?
A. Oh, I can do—

Q. Let's see that paper. Have you got it here? I show you this Petitioners' Exhibit No. 7 and call your attention to the word "Lee" and to the word "Arenas." Didn't you make that mark on there?

A. I don't know. Maybe I did.

Q. What? [300] A. Maybe I did.

Q. Maybe you did. Well, don't you know whether you did or not?
A. I don't know.

Q. You don't know. Don't that look like your handwriting?
A. I guess.

Q. How long would it take you to sign your name now?

A. About—it would take quite a while.

Q. What would we have to do to get you ready to sign it? Would you have to have a chair and a table?

A. Oh, right here I can sign it; yes.

Q. Right here you can sign it. Well, give us a piece of paper, Mr. Clerk. Do you want a pen?

A. Oh, anything will be all right.

Q. Well, I guess this was written in pen. How would you like to write it with Preston's pen? It won't cost you a cent.
A. All right.

Q. Now, write "Lee Arenas."

A. Right here, huh?

Q. Right anywhere. Do you write with your left hand?
A. I have to because this hand is no good.

Q. This hand is no good? A. No. [301]

Q. Ordinarily you write with your other one, do you?

A. Oh, when it is good; yes.

(Testimony of Lee Arenas)

(Witness marking on paper.)

Mr. Preston: All right. We submit that and offer that in evidence as part of the cross-examination of this witness.

The Court: The exemplar is received into evidence as Petitioners' Exhibit.

The Clerk: 18, your Honor.

Mr. Preston: And the Government was trying to put you off of your lands, were they not? The Government brought a suit. Do you remember that suit?

A. I don't remember.

Q. You don't even remember the suit. You were shown a paper here a while ago. You remembered it then, didn't you? You were shown a file of papers here a while ago about a suit to put you off your lands and all the other Indians down in Palm Springs.

A. Oh, in that case?

Q. Yes.

A. Yes; but it never come up to court, did it?

Q. No. Who got it dismissed for you, do you know?

A. I don't know.

Q. You don't know whether Preston did that or not, do you? [302]

A. I gave the paper to Sallee.

Q. You gave the paper to Sallee. You don't know whether Preston did or did not get that dismissed for you, do you?

A. I don't know.

Q. You don't know a thing about it?

A. I don't know a thing about it.

Mr. Preston: Mr. Clark would like to ask a couple of questions. May we have the unusual dispensation again?

The Court: You may.

(Testimony of Lee Arenas)

Further Cross-Examination

By Mr. Clark:

Q. Mr. Arenas, do you remember after Judge Preston and I had been back to the Supreme Court in Washington that I came out to Palm Springs and talked one evening to you Indians there by the Springs about Washington?

A. Yes; I remember that.

Q. And do you remember I told you that we were very happy with the reception we had received at Washington, as to what the judges had commented from the bench, and we felt very hopeful that you would win that case? You remember that? A. Yes.

Q. Then do you remember afterwards, when the Supreme Court decided in your favor, I came to Palm Springs, had [303] a meeting of the Indians, and I told you about the decision of the Supreme Court?

A. Yes.

Q. And do you remember that you asked me to come, because you said the Indian Agent said we didn't win anything, the Supreme Court decision didn't mean anything? Do you remember that? And so I said I would come out and meet with the Indians and tell them about the decision; do you remember that? A. I remember that.

Q. And do you remember that on both of those evenings I told you about the splendid work that Judge Preston had done for the Indians in working with us in the Supreme Court?

A. Right in office you told me that.

Q. And out in Palm Springs on these evenings there by the springs, that I came out and talked to many of the Indians together, don't you remember I told you about that?

(Testimony of Lee Arenas)

A. Maybe I heard you talk. I seen you there, but I don't understand the meaning what you were saying there.

Q. You did not understand what I was saying?

A. No.

Q. And do you remember, Mr. Arenas, that on a number of times, both in my office and at Palm Springs, you told me you were very grateful for Judge Preston being in the case?

A. Well, it is all right; yes. [304]

Q. And you were grateful, were you not?

A. I was.

Q. You thought I did a good thing for the Indians and for you when I brought Judge Preston into it, didn't you?

A. That is what you said, yes; because you know better.

Q. You believed it, didn't you?

A. I believed it. You know better.

Q. How long have you been writing with your left hand?

A. It been about three years, something like that.

Q. About three years? A. Yes.

Mr. Clark: That is all.

Mr. Taheny: That is all.

Mr. Brett: That is all with Mr. Arenas.

The Court: You may step down.

Mr. Taheny: Your Honor, we will call Mrs. Arenas at this time. It will be somewhat along the same line as Mr. Arenas, and it would be the logical time to put her on.

The Court: Yes; you may.

Mr. Taheny: Mrs. Arenas, will you take the stand, please?

MARIAN THERESE ARENAS,

called as a witness by respondents, being first sworn, was examined and testified as follows: [305]

The Clerk: Please state your name.

The Witness: Marian Arenas.

The Clerk: Marian Arenas.

Direct Examination

By Mr. Taheny:

Q. Mrs. Arenas, will you speak up so everybody can hear you. What is your name?

A. Marian Therese Arenas.

Q. And you are the wife of Lee Arenas?

A. Yes, sir.

Q. When were you married to him?

A. September the 17th, 1941.

Q. I show you a document which has been introduced in evidence—I mean which has been marked for identification as Petitioners' Exhibit No. 8, purports to be signed by you. It bears date of February 1st, 1945. I will ask you if that is your signature on that document?

A. Yes; it is.

Q. Now, below your signature there is a certificate of Benton Beckley, a notary public, certifying that you appeared before him on February 1st, 1945 and acknowledged the execution of that document. Do you remember whether or not you did go before Mr. Beckley?

Mr. Preston: To which we object upon the ground it is immaterial, it being admitted she signed the document. What difference does it make whether it is notarized or not? [306]

The Court: Overruled.

(Testimony of Marian Therese Arenas)

Q. By Mr. Taheny: Did you appear before Mr. Beckley at that time? A. No; I didn't.

Q. You did not? A. No.

Q. Now, I will show you a document which is in the same form, apparently a mimeographed copy of the previous one, except that it has the name of "Lee Arenas" filled in and purports to be signed by him on the same date. This one is referred to as Petitioners' Exhibit No. 7. I will ask you whether you remember or whether you were present at the time that document was signed?

A. Yes; I was.

Mr. Preston: What is the answer?

Mr. Taheny: She says I was, yes.

Q. Do you recognize that as the signature of Lee Arenas? A. With his right hand; yes.

Q. With his right hand? A. Yes.

Q. At the time these documents were signed had you been served with suit papers in the case of United States versus Lee Arenas, Marian Scott Arenas, and many other Indians? [307] A. Yes.

Q. At that time? A. Yes, sir.

The Court: You are referring now to?

Mr. Taheny: Referring to action 3184-O'C.

Q. At the time that you signed this document which is marked Exhibit 8 for identification were you a party to any other litigation? A. No, sir.

Q. Did you talk to any attorney before you signed this document? A. You mean on the ejection suit?

Q. Yes. A. Mr. Sallee.

(Testimony of Marian Therese Arenas)

Q. Can you state what was the conversation between yourself and Mr. Sallee at the time you signed this or in reference to the signing of this document which is marked Exhibit 8 for identification.

Mr. Preston: To which we object on the ground it does not appear to have any material connection with this case, if your Honor please. What happened between her and Mr. Sallee about defending the other case would not be important here.

The Court: Overruled.

Mr. Taheny: If the court please— [308]

The Court: Overruled.

Mr. Taheny: Pardon me.

The Court: You may answer.

The Witness: What was that question, now?

The Court: Please read it, Mr. Reporter.

(Question read by the reporter.)

A. Well, the Government served us with those ejection suits and Mr. Sallee told me, himself, that I had to have somebody to defend me on that; and I told him that I didn't belong to the Tribe of the Palm Springs and they couldn't sue me because I didn't have anything. So I hired him at the time to defend me on that ejection suit.

Q. By Mr. Taheny: Well, as regards the signing of this document was there any discussion of the signing of this document at the time you had this discussion with Mr. Sallee relative to his defending you in the ejection suit?

Mr. Preston: That is what she has just testified to.

Q. By Mr. Taheny: You just told us that he told you that you had to have an attorney. What I want to find out is: Was there any discussion between you and

(Testimony of Marian Therese Arenas)

him of this particular contract marked Exhibit 8 for identification?

A. No. He was only to defend me in the ejection suit, not on Lee's case.

Q. As regards the signing of this document, was this signed in reference to any particular suit?

A. No. [309]

Mr. Preston: I don't want to object all the time, if your Honor please, but I seem to have a different view. We do not claim anything under this contract against Lee Arenas. I put it in evidence only for the purpose of showing that he had an opportunity to have independent advice. I am not claiming anything or we are not claiming anything by virtue of this contract at all.

The Court: By "this contract" are you referring to—

Mr. Preston: The one signed by this witness.

The Court: —Exhibit 8 for identification?

Mr. Preston: Yes. That is the only thing we had it put in evidence for.

Mr. Taheny: I would like to ask counsel if his statement also applies to Exhibit No. 7, or is he relying on Exhibit 7 in this action?

Mr. Preston: We certainly will rely on Exhibit No. 7, but we are not relying on Exhibit No. 8 at all, except to show that they had the chance for independent advice.

The Court: Exhibit 8 is only for identification at this time?

Mr. Taheny: That is right.

The Court: Do the petitioners offer it into evidence?

Mr. Preston: I am not offering it now that I know of. At least I would take that question under advisement, your Honor, at this date. We only offered it for the pur-

(Testimony of Marian Therese Arenas)

pose of showing the party had a chance to have independent advice. [310]

The Court: That is Lee Arenas had?

Mr. Preston: Lee Arenas had independent advice. For that purpose I am willing to offer it again.

The Court: Is there objection to the offer of Exhibit 8 for identification? It is now received into evidence. I understand there was no objection.

Mr. Taheny: No objection.

Q. Were these documents which are now in evidence as Exhibits 7 and 8 signed at the same time?

A. Yes, sir.

Mr. Preston: What was the answer?

(Answer read by the reporter.)

The Witness: Yes.

Q. By Mr. Taheny: And at the time these documents were signed was anything said to you or to Mr. Arenas in your presence to the effect that either of these documents was to apply to the suit that is now involved in this case, that is, the suit of Arenas versus the United States? A. No, sir.

Q. At the time that Mr. Sallee told you that you needed an attorney was there anything said at that time about the necessity of you signing a contract?

A. He said I had to have a power of attorney so he could defend me in that suit.

Q. Are you speaking now of the ejectment suit? [311]

A. Yes, sir.

Q. And at all times thereafter it was your understanding that these two documents, Exhibits 7 and 8, applied only to the ejectment suit? A. That is right.

(Testimony of Marian Therese Arenas)

Mr. Preston: To which we object upon the ground that her understanding of Lee Arenas' document has nothing to do with it.

The Court: Overruled. The answer may stand.

Q. By Mr. Taheny: Now, do you know whether or not the other Indians involved in that suit, with the ejectment suit, also signed similar powers of attorney on the same mimeographed form?

A. There are some that did; yes, sir.

Q. And these other Indians had no connection whatever with the suit of Arenas versus the United States which is now pending here?

A. No.

The Court: Your answer was "no"?

The Witness: Yes, sir.

The Court: You are not a member of the Tribe?

The Witness: No, your Honor.

Mr. Taheny: She is a Mission Indian, your Honor, but not a member of the Palm Springs band.

The Court: Is that correct? [312]

The Witness: That is right.

Mr. Preston: Is that all?

Mr. Taheny: That is all.

Cross-Examination

By Mr. Preston:

Q. Why, Mrs. Arenas, don't you recall that all the Indians in Palm Springs, practically, started new suits about their allotments; that I, as one of their attorneys, filed suits in this court for allotments for all of them? Don't you remember that?

A. No; I don't.

(Testimony of Marian Therese Arenas)

Q. What?

A. No; I don't. Do you mean on the ejection suits or the allotment?

Q. No, no; we are not talking about the injunction or the ejection suit at all now. I am talking about suits to get their allotments. Didn't I, as one of the attorneys in the case, file suits here in this court, some eight or ten or a dozen or more of them, for the purpose of having allotments, new allotments, made for these Indians or the old ones sustained? A. I don't know about that.

Q. You remember the Hatchitt case, don't you, that I carried to the Circuit Court of Appeals?

A. Yes, Mrs. Hatchitt and her daughter. Those are [313] the only two that I know of.

Q. Yes. But suits were begun for every one of the rest of them, and what these Indians signed was a power of attorney, an authority, just as in this suit here, Exhibits 7 and 8 here, was it not? You know that all the Indians signed statements similar to that, and that I began these suits, didn't I?

A. I know they signed up for the ejection suit, but for the allotment suit I couldn't say.

Q. There is nothing said in there about ejection suit, is there?

Mr. Taheny: If the court please, I do not want to interrupt Judge Preston but—

The Court: Make your objection.

Mr. Taheny: —it seems to me we should have some identification of these suits, because the only suits I know of are in the 4402 class, and we might like to refer to them. I would like to have Judge Preston identify them.

(Testimony of Marian Therese Arenas)

Mr. Preston: We will bring all these suits in as part of our case, and bring in a dozen of them.

Mr. Taheny: There were cases 4401-5, inclusive, filed later than the ejectment suit. You can tell them by the numbers, and I would like to at least have the question explicit enough to know whether Judge Preston is referring to those or to some other cases. [314]

The Court: The witness has stated that she knew about the Hatchitt cases and that is the extent of her knowledge about it.

Mr. Preston: That is the one we took up, and the rest of them we have nothing on because we dismissed, your Honor.

Q. The document signed here, Petitioners' Exhibit 8 in this case, did you read it? A. Sure, I did.

Q. You can read and write and talk English very well, indeed, can you not? A. To a certain extent.

Q. Were you educated? A. Yes.

The Court: What place? Where did you go to school?

The Witness: I went to Fallbrook High School.

Q. By Mr. Preston: You went to what high school?

A. Fallbrook.

Mr. Preston: Fallbrook High School. Did you go to the Sherman school out at Riverside?

A. No.

Q. How far did you go through school, what grade?

A. Oh, I went up to Haskell Institute and took a commercial course.

Q. Took a commercial course. Well, you read this document, you say, Exhibit 8? [315] A. Yes.

(Testimony of Marian Therese Arenas)

Q. You know it did not say anything about the ejectment suit, don't you?

A. Well, I was all upset because that is the first time they had ever served papers on me like that.

Q. You knew it did not say a word about the ejectment suit, didn't you?

A. I don't know. They asked me to sign that at the time, because I had no right to sign for Lee's allotment.

Q. Was Beckley there that day?

A. I have never been in Beckley's home.

Q. Was Benton in town that day when you signed that?

A. To tell you the very honest truth, I don't think I was in Los Angeles on the 1st of February.

Q. You were here to the trial of the case, weren't you? A. On the 1st of February?

Q. You and I were the very best of friends out here in the hall?

A. And we did sign these, Mr. Preston. I signed this at the house.

Q. You said it was your signature?

A. Why, sure.

Q. Was Mr. Beckley there when you signed it?

A. At my place?

Q. Yes, or wherever you signed it? [316]

A. I don't think so.

(Testimony of Marian Therese Arenas)

Q. You do not know for sure?

A. I don't ever remember of going before Mr. Beckley and signing it.

Mr. Taheny: He is not a notary in this county, is he, counsel?

Mr. Preston: What?

Mr. Taheny: He is not a notary in Los Angeles County, is he? He is a notary in Riverside County.

Mr. Preston: I don't know whether he was or was not.

Q. Did you go to school in Kansas, also?

A. Well, I said, "Haskell."

Q. What is that school?

A. It is an Indian school.

Q. An Indian school at what place?

A. Lawrence, Kansas.

Q. Where? A. Lawrence, Kansas.

Q. Lawrence, Kansas. How long were you there?

A. Not very long.

Q. Did you take a commercial course, did you say, there? A. Yes, but I didn't get through.

Q. You did not get through?

A. No. I just got started. [317]

Q. Did you get married, something like that?

Mr. Taheny: Just a moment. I make an objection here to that kind of cross-examination.

Mr. Preston: That is all.

The Court: Any further questions of Mrs. Arenas? You may step down. [318]

DAVID D. SALLEE,

one of the respondents herein, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Brett:

Q. Mr. Sallee, I will show you a letter addressed by you to James A. Murray, Special Assistant to the Attorney General, at Los Angeles, dated December 4, 1944. Does that letter not bear your signature?

A. It does.

Mr. Brett: Will you mark this for identification as our next exhibit, Mr. Clerk?

The Court: Is there any objection?

Mr. Preston: No objection.

The Court: Do you intend to offer it?

Mr. Brett: Then I will offer it into evidence.

The Clerk: Exhibit K.

The Court: Received into evidence.

Q. By Mr. Brett: Now, Mr. Sallee, is it not a fact that following the dispatch of the letter which has just been marked as Respondents' Exhibit K, that you and Mr. Oliver O. Clark and Judge Preston, as associates, filed an answer in the ejectment action in Case No. 3184-O'C, which was against Lee Arenas and his wife; and, at the same time, also filed identical answers in the following ejectment [351] suits against other members of the Palm Springs Indian Tribe: 3185, 3187, 3188, 3189, 3190, 3192, 3193, 3196, 3197, 3198, 3199, 3200, and 3201 in this court?

Mr. Preston: Let me see them. Before you answer it, let me look at those, will you? Where are the answers? I do not see any.

(Testimony of David D. Sallee)

Mr. Brett: I verified each one, for your information.

Mr. Preston: And that is the date of December, 1944. What is the question? I have forgotten what it is.

The Court: Let us not go over all that. What do you want to know about it?

Mr. Preston: We will stipulate that we filed answers in the cases recited and mentioned by the counsel in the fall of 1944; but we want it understood that we have the right to bring in here the list of cases also filed concerning these allotments at a later date.

The Court: Gentlemen, I can say I will take judicial notice of the records of this court, if you will call them to my attention.

Mr. Brett: That is satisfactory.

The Court: And give me judicial knowledge, I will take notice.

Q. By Mr. Brett: Mr. Sallee, you are familiar with Exhibits 7 and 8, the mimeographed form of agreements which have been offered in this case? [352]

A. Yes.

Q. Did you not procure the mimeographing of those agreements? A. I did not. (I did.)

Q. And did you not circulate all of those agreements among all of the members of the Tribe of Palm Springs?

A. No.

Mr. Preston: What is the answer?

A. No.

Mr. Preston: "No."

Q. By Mr. Brett: Did you not circulate those among quite a large number of them?

A. Quite a large number and signed them up.

(Testimony of David D. Sallee)

Q. You commenced that circulation of quite a large number in preparation for filing the answers in the ejectment suits, did you not?

A. I couldn't tell you the dates on them right now. They speak for themselves when they were signed.

Q. I have a letter here on the letterhead of David D. Sallee, dated December 28, 1943.

The Court: Perhaps counsel will stipulate with you that that letter was sent.

Mr. Preston: I don't know what it is. I have not seen it yet.

The Court: If you will be much longer, we will have to adjourn. [353]

Mr. Brett: No; I will not. This is the last thing I am going to offer. I realize that your Honor has been ill.

The Court: I have in mind the reporter. He has been sitting here quite a while.

Mr. Preston: I have no objection to the letter.

Mr. Brett: With that statement, then, I will ask Mr. Sallee if it bears his signature, since he is the witness on the stand.

The Court: Is that your letter, Mr. Sallee?

The Witness: Yes; it is.

The Court: Did you send it to the person addressed, on or about the date it bears?

The Witness: I did.

The Court: Offer it in evidence?

Mr. Brett: I offer it in evidence.

The Court: Received.

Mr. Brett: And, your Honor, I offer into evidence by reference—

The Clerk: Marked L.

(Testimony of David D. Sallee)

Mr. Brett: I offer into evidence by reference the complaint and answer, only, in the cases which I referred to in my next previous question to Mr. Sallee, beginning with 3185 and ending with 3201, offering the same by reference since they are records of the court.

The Court: Are they consecutively numbered? [354]

Mr. Brett: No. I will give them to you again. 3185, 3187, 3188, 3189, 3190, 3192, 3193, 3196, 3197, 3198, 3199, 3200, and 3201.

Mr. Preston: We have no objection to that, provided we have the same right to have the other cases that are on file in this court considered by the court and which relate to these allotments.

The Court: Is there objection?

Mr. Brett: None. But I think we might as well put them in. I have them here.

The Court: Very well. The files just listed and the cases just listed by Mr. Brett, being numbered in this court, are received into evidence by reference. You offered only the complaint and the answer?

Mr. Brett: That is right.

The Court: In those cases, received into evidence by reference, as Respondents' Exhibit M.

The Clerk: Generally M, your Honor.

The Court: M with sub-numbers for each case in consecutive order.

Mr. Preston: Counsel has presented, and I accept his offer as far as it goes, that causes Nos. 4401, 4402, 4403,

(Testimony of David D. Sallee)

4404, 4405 be admitted by reference for the purpose of showing that in the month of April, 1945 these suits were begun respecting the allotments. [355]

Mr. Brett: No objection.

The Court: Received into evidence as Petitioners' Exhibit 19—would it be, Mr. Clerk?

The Clerk: I believe so, your Honor.

The Court: With sub-letterings for each file in numerical order.

Mr. Preston: And I would like to have it understood that there are at least this many more, in my opinion, that are not here. The Hatchitt cases, for example, two of them are not here that I know of; and they all relate to the establishment of the rights of these Indians to their allotments.

The Court: If you desire, you may direct the court's attention to any other cases which are in this court and the court will, of course, take judicial notice of those records.

Mr. Preston: I desire to make another statement at this point, if your Honor please, that is: That I have, on behalf of my associates and myself, selected a lawyer in Washington and I have forwarded to him a mandamus proceeding or a proceeding in the nature of mandamus to compel the Government of the Indians to get busy to make some new allotments to these Indians, and the case is undoubtedly filed before this time. I have had one message

(Testimony of David D. Sallee)

to the effect that the papers had arrived, but I have not had any message that they have been actually filed. [356]

The Court: Any further questions of Mr. Sallee?

Mr. Brett: That is all the questions I have of Mr. Sallee.

The Witness: Just one minute.

The Court: Mr. Sallee has some question.

The Witness: Judge, I would like to call your attention to another question.

Mr. Preston: Well, Mr. Sallee, what statement was it you desired to make to me in connection with these suits?

The Witness: There is in my office today at least 10 or 12, I think it is, complete complaints that Judge Preston, Oliver Clark, and myself prepared on these allotments that have not been filed heretofore. I do not think we filed them all at that original time.

Mr. Preston: The object in taking these contracts was to pursue the remedy, if we could, that would give these Indians their allotments?

The Witness: That was true.

Mr. Preston: And it did not relate alone or at all, I suppose, to this question of ejectment?

The Witness: Not at all.

Mr. Preston: Not at all.

Mr. Brett: We will accept that as a stipulation. Well, that is his testimony. [357]

OLIVER O. CLARK,

one of the petitioners herein, recalled as a witness by petitioners, being again sworn, was examined and testified as follows:

Direct Examination

By Mr. Preston:

Q. Mr. Clark, will you make a statement to the court?

Mr. Clark: Judge Preston, I am not sure that I was sworn. (The clerk again swore the witness.)

The Clerk: Please state your name.

The Witness: Oliver O. Clark, C-l-a-r-k.

Q. By Mr. Preston: Do you desire to make a statement of fact with respect to the matter that I have just presented to the court or in connection with it?

A. A very brief one.

Q. Go ahead.

A. Within a week or two after the filing of the ejectment suit against Lee Arenas, which I think is No. 3184-O'C in this court, I had a conversation with Lee Arenas in which I told him that the Government had commenced that [373] action and, for the purpose of getting possession of his allotted property from him for the benefit of the tribe, and that in support of the ejectment suit the Government was taking the position that the allotment to Lee Arenas was invalid; and that it presented identically the same issue, but in a different form procedurally, as the issue presented in his case against the Government.

In other words, in the ejectment suit the Government was assuming an affirmative of showing that the allotment was invalid and therefore he could not keep the property, and we would defend by showing it was valid, whereas in Lee's suit against the Government we contended that the

(Testimony of Oliver O. Clark)

allotment was valid and the Government was defending on the ground that it was invalid.

And I told him then that our services in the defense of the ejectment suit were a part of the services which we were rendering under our agreement with him in respect of the main litigation.

And I never said to Lee Arenas or to Mrs. Arenas or to anyone that the services of the ejectment suit were something apart or outside of the scope of our employment for which we would require any additional compensation.

And I never said to anyone, much less to them, that the last contract, the one in evidence here of 1945, was with reference to services in the ejectment suit. [374]

Mr. Preston: Cross-examine.

The Court: By that you mean with references solely to certain ejectment suits just mentioned?

The Witness: That is true, your Honor.

Cross-Examination

By Mr. Brett:

Q. Mr. Clark, you were aware of the fact that in this action you just referred to Marian Scott Arenas was named as a defendant? A. Yes.

The Court: By "this action you just referred to" you are referring to?

Mr. Brett: I am now referring to No. 3184-O'C which has been received in evidence as Respondents' Exhibit E prior to this.

The Court: Is that the ejectment action?

Mr. Brett: The ejectment action.

The Witness: Yes; I knew that and discussed it with both Lee and Marian.

(Testimony of Oliver O. Clark)

Q. Then you discussed this same matter that we have just referred to with Marian?

A. I told her that the reason she was joined was because the ejectment suit was a suit formed to recover possession, and since she technically was in possession of property, the Government had joined her. [375]

Q. And did you tell her that at the time that you procured the signatures to these two mimeographed contracts?

A. No. I told that to her at the time when I first spoke to Lee about the ejectment suits having been filed, because at that time they wondered why the suit was against Lee and Marian and not against Lee alone.

Mr. Brett: Just a minute. May I inquire of Mr. Taheny?

Mr. Taheny: Your Honor, may I ask some questions?

The Court: You may.

Cross-Examination

By Mr. Taheny:

Q. Mr. Clark, can you fix the date of this conversation?

A. I would say it was within a week or 10 days after the filing of that ejectment case, and that was in 1943, I think, in the month of December. But my recollection of the—

Q. According to the record here—

A. My recollection of the date is solely in respect of the approximate time after it was filed, when I talked with them.

(Testimony of Oliver O. Clark)

Q. According to the record which is here as an exhibit, it was October 4, 1943 when it was filed. And at that time you knew, did you, that a great many other Indians, probably 20 to 30, were also joined in the same suit as parties defendant? [376]

Mr. Brett: Of the same suit?

Mr. Taheny: In the same suit as parties defendant.

A. I don't remember now whether it was the same suit or separate suits, but I do remember that practically all of the allottees whom we represented were being then pursued by the Government in ejectment.

Q. There were several ejectment suits at that time?

Mr. Preston: 14, Mr. Taheny.

A. My recollection is that there was a separate suit as to each allottee, but I would not say that definitely.

The Court: By that you mean as to each person named in the 1927 list?

The Witness: Yes, your Honor.

The Court: That is the Wadsworth list of 1927?

Mr. Clark: That is right.

Q. By Mr. Taheny: And you appeared as attorney for all those who were served with summons in the ejectment suits?

A. I have no recollection of that, but whatever appearances were filed, why, of course I would appear as counsel for the defense.

The Court: Were you acting as counsel for all the persons who were sued in that series of ejectment suits?

The Witness: I would think so, your Honor, but I am not clear about it because it seems to me that another firm of lawyers represented one or two of the Indians whom we never [377] represented.

(Testimony of Oliver O. Clark)

Mr. Preston: Yes; that is true.

Mr. Brett: That is correct. That is true.

Mr. Preston: I remember that I filed 14 answers, your Honor.

The Court: Those actions are all in evidence by reference, are they not?

Mr. Preston: They are all right here.

Mr. Brett: Yes, your Honor.

The Court: The records will show if you want to check.

Mr. Clark: Yes, your Honor.

Mr. Taheny: I am just taking a few of them at random, your Honor. It appears that Mr. Preston and Mr. Clark and Mr. Sallee and Mr. Smith appeared and filed the answers in those various actions.

The Court: That is Mr. Clark's recollection, too, and Judge Preston has just observed that he recalls filing 14 answers.

The Witness: May I say, your Honor, that Mr. Smith is my son-in-law and had recently come to the Bar, and I therefore associated him in all of my litigation that he could get experience.

The Court: Any further questions?

Mr. Taheny: Yes.

Q. As regards these other Indians who were named at [378] that time, the suits against them were, so far as you can recall, suits of the same nature?

A. That is my recollection.

Q. At the time that these answers were filed for these other Indians, for example, the answer here in the Hatchitt case, did you have any contract with these other Indians prior to that time, any written contract, prior to the time

(Testimony of Oliver O. Clark)

that they were joined in this suit, any of these suits, about October, 1943?

A. We had a contract both originally and subsequently, in substantially the same form and substance and of substantially the same date as the contracts with Lee Arenas, with each of the other allottees.

Q. And what were the dates of those contracts?

A. That I am unable to say.

The Court: You say about substantially the same date?

The Witness: Substantially the same date.

The Court: In other words, you had a long contract with them such as the first contract you had with Lee Arenas, and then subsequently, in 1945, you had a short mimeographed form of contract such as you had with Lee Arenas?

The Witness: That is true, your Honor; and the difference in dates would be only the difference in getting to each of the Indians to get a signature.

Q. By Mr. Taheny: Then on or about the time that [379] these 1945 contracts were signed with Lee Arenas and his wife, other contracts were signed in the same form with the other parties to these ejectment suits?

A. That is true.

Q. You had no contract with Mrs. Arenas at any time, that is, no written contract other than this particular contract which is in evidence bearing the date of 1945?

A. That is true.

The Court: That is Exhibit 7, power of attorney and contract?

The Witness: That is true.

(Testimony of Oliver O. Clark)

The Court: And the earlier lengthy contract was November 20, 1940?

The Witness: That is true.

The Court: Exhibit 6 here.

The Witness: May I make one statement about the contract with Mrs. Arenas?

Mr. Preston: Go ahead, please.

The Witness: At the time when the matter of a contract with her was suggested, I stated to Mrs. Arenas that, while she was not an allottee and we then had no claim to present on her behalf or nothing to defend for her, but in view of the fact that Lee's health, by spells, was very bad and at one time during that period we thought he was going to die, in which event she would probably succeed to his estate, [380] that we thought we ought to have a contract with her which would be effective in event of Lee's death as to her inheritable interest in the property if the litigation had not previously been concluded. And that was the reason why, as I talked it with her, the contract with her was signed.

Q. By Mr. Taheny: But that contract with her was not signed, however, until the same time that you signed these contracts with the other Indians—

A. That is true, of a later time.

Q. —whom you were representing in ejectment suits?

A. That is true. We were also representing the other Indians in respect of the allotments that had been the subject of much discussion with the Government, and they had shown to us a letter from Washington saying that those allotments would abide the outcome of the Lee Arenas suit.

(Testimony of Oliver O. Clark)

Mr. Taheny: Your Honor, a moment ago you mentioned Exhibit No. 7. I believe the contract of Mrs. Arenas in respect of which I was questioning the witness is marked Exhibit 8.

The Court: Yes. That is the same form, though, is it not?

Mr. Taheny: The same form; that is right.

The Court: As Exhibit 7?

Mr. Taheny: That is right.

Q. This conversation that you speak of that you had with [381] Mrs. Arenas in which you suggested that she sign a contract because Mr. Arenas might pre-decease her, when was that discussion held; what date was that?

A. That was during the time that I was discussing with Lee Arenas and his wife the advisability of bringing Judge Preston into the litigation and making a new contract covering our compensation.

Q. Did you have anything to do personally with the signing of the contract marked Exhibit 8?

A. Which one is that?

Q. That is one Mrs. Arenas signed.

A. I have testified as to what I had to do with it.

Q. Well, after this conversation that you had with Mrs. Arenas in 1943 concerning the bringing in of Judge Preston did you have any further conversation thereafter with Mrs. Arenas in regards to her signing this document, Exhibit 8?

A. It is my recollection, but it is very dim, that Mrs. Arenas was present with Lee Arenas when I spoke to Lee about the time had now come when we should reduce our oral understanding to writing, and that at that time, in substance, that I said to her that that would cover both

(Testimony of Oliver O. Clark)

our understanding with her and with Lee Arenas, hers covering the contingency of Lee's death and her inheritance. I remember no other conversation at this time with her. [382]

Q. Then do I understand your testimony to be, then, that you had no conversation with her after 1943, the year 1943, between that time and the time she signed this contract, Exhibit 8, in 1945?

A. Well, as I say, I do not know the conversations to which I have last testified occurred at the time of the signing of the contracts, but it was about that time. It was the time when I suggested to Lee and Marian that we should now reduce our oral understanding to writing, and that was about the time when the second writing was signed, but I couldn't say it was on that day.

Q. Well, the actual obtaining of the signatures by Mr. and Mrs. Arenas was, I noticed, by Mr. Sallee, was it not, in the 1945 contract? A. Yes.

Q. And you were not present at the time they were signed, were you?

A. Oh, yes; I was. I was present when Lee and Marian signed the last contract. I was not present when Lee signed the first contract in evidence here.

The Court: Any further questions, Mr. Taheny?

Mr. Taheny: Yes, your Honor.

Q. Now, at the time this was signed did you have anything to do with the drawing up of that 1945 contract, the phraseology of it?

A. Yes. That is the later contract? [383]

(Testimony of Oliver O. Clark)

Q. Yes. A. I think I prepared it.

The Court: We have covered all this territory before.

Mr. Preston: It is all in the statement here, the Interrogations, Exhibit 4.

Mr. Taheny: Let me ask you this: At the time Mrs. Arenas signed that contract, that 1945 contract, is it your testimony that she was asked to sign that solely so that you would have something in writing signed by her in the event she survived her husband while this litigation was pending?

A. Not at that time. I don't think it was mentioned at that time, but that is the substance of what I said to her earlier, when the ejectment suits had been filed, that we should have a writing with her substantially the same as with Lee, to abide the contingency of his death and her inheritance.

Mr. Taheny: I believe that is all.

Mr. Brett: Your Honor, I have one question not in cross-examination.

The Court: One?

Mr. Brett: Just one question.

The Court: Very well.

Mr. Brett: I would like to ask if I may use Mr. Clark as a witness on behalf of Arenas for this one question only, because I think that I can't rely on the book. [384]

Q. Mr. Clark, in the report of the Arenas case decided by the Supreme Court, in 88 Law Ed. at pages 1373

(Testimony of Oliver O. Clark)

and 1374, it is indicated in the reporter's notes of the briefs by both sides and of the appearances that, in addition to Judge Preston appearing and arguing the case, you also appeared and argued the case; is that correct?

A. Yes; I did. We divided the case into two parts. Judge Preston opened the argument on the question of the statutory liability, I followed on the question of estoppel, and I presented the rebuttal argument at Judge Preston's request in relation to the entire case. That was my first and only appearance before that court.

The Court: Any further evidence, gentlemen? [385]

* * * * *

The Court: During the noon hour I wish you would think of this: If we are to consider policy, should not the court be on the liberal side of what is reasonable? I mean laying aside the question of whether that first contract fixed the limit, the maximum limit; assuming it does not, should not the court be on the upper side of what is reasonable in order to encourage lawyers, in view of the history of this situation, to encourage lawyers to aid these Indians who manifestly need assistance to handle the Secretary of Interior, if policy is to be considered?

* * * * *

[Endorsed]: Filed Jan. 3, 1949. Edmund L. Smith, Clerk. [497]

[PETITIONER'S EXHIBIT NO. 4]

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In the District Court of the United States, in and for
the Southern District of California, Central Division.

Lee Arenas, Plaintiff, vs. United States of America,
Defendant. No. 1321-O'C Civil.

INTERROGATIONS

Pursuant to a Stipulation dated January 28, 1948, entered into between petitioners John W. Preston, Oliver O. Clark, and David D. Sallee, and respondent United States of America, and Lee Arenas (by United States of America), the following testimony was taken at a conference held in the law offices of John W. Preston, Esq., 712 Rowan Building, Los Angeles, California, on January 28, 1948, at two o'clock p. m., in connection with the above entitled action.

Those present and participating in the conference were: Messrs. John W. Preston, Oliver O. Clark, David D. Sallee, and Irl D. Brett.

(Petitioner's Exhibit No. 4)

Mr. Brett made the following interrogation of Mr. David D. Sallee:

(Judge Preston handed Mr. Brett, in the presence of Messrs. Oliver O. Clark and David D. Sallee, a document entitled "Statement of Facts" in reference to the services performed by them, and each of them, in the case of Lee Arenas vs. United States.)

Q. As I understand it, Mr. Sallee, the Statement of Facts, which has just been handed to me, consisting of eight pages and reciting certain facts respecting your activities as set forth in the Petition upon which the Order to Show Cause is based, may be deemed, for the purpose of the Stipulation, a statement of facts as you would testify to them in connection with what you did as attorney for Lee Arenas in this case? A. Yes.

Q. You have shown me the original of a document which bears the date of November 20, 1940, which recites that it is an agreement between Lee Arenas and David D. Sallee. Now, was that document executed in more than one original? A. Yes; two.

Q. Were both signed and acknowledged in the form in which you have submitted a copy to me? A. Yes.

Q. Were you present, Mr. Sallee, when Lee Arenas affixed his signature to that document—when he signed both originals?

A. Yes, in the court room of Judge McCormick, before Judge Paul J. McCormick.

Q. Lee Arenas was there?

A. Yes, and on the stand for about two hours.

Q. Was there any transcription of his statements or testimony at that time? A. I doubt it.

(Petitioner's Exhibit No. 4)

Q. Who were present besides Judge McCormick and Lee Arenas and yourself?

A. A man by the name of Collett, who is in Washington at the present time. There were two or three Indians too, I think, but it has been so long ago I can't remember exactly. Eugene Graves was in the court room that afternoon.

Q. Were the clerk and bailiff there? A. Yes.

Q. How did the proceeding originate, how did you get before Judge McCormick?

A. I don't remember whether the clerk took it in there or whether he let me go in there to see Judge McCormick personally and ask him to make an ex parte matter of it. It was over seven years ago and those details are gone now.

Q. Was any member of Lee Arenas' family present besides himself?

A. I don't know whether he was married to his present wife at that time or not, I don't think so, but if they were married, she was there. If they were not married, there was no other person there.

Q. It is not contended that there was any legal proceeding then pending in the District Court to which Lee Arenas was a party?

A. No, the suit hadn't been filed. The suit was filed December 20th, and this was November 20th.

Q. My question is this, Mr. Sallee: There was no proceeding in the District Court at Los Angeles that was pending at the time of this hearing before Judge McCormick in which Lee Arenas was a party?

A. This proceeding was had under the procedure of the rules and regulations of the Interior Department and

(Petitioner's Exhibit No. 4)

the Indian Department to have a contract validated before a local Judge.

Q. Was it required to comply with Section 2103 of the Revised Statutes? A. I would have to read it.

Q. I was referring to the one mentioned in the contract. A. I expect it is, yes.

Q. Before this meeting in Judge McCormick's court room, had you had any conversation with Lee Arenas about the making of this agreement? A. Yes.

Q. And where did you have this conversation?

A. The first one was in the office, in my office in the Garfield Building, the day he came in and asked me to check his case for him, that was the first time I had met him.

Q. Can you fix it with reference to this date, not necessarily the exact date?

A. Just a short time—probably six weeks or thirty days, I can't tell you, I don't just remember.

Q. And at that conference who were present?

A. Just him and myself at the first conference, the second I called Mr. Clark and he came downstairs to my office. We had the same reception room at that time and I buzzed him and he came in.

Q. This second conference was before you went to Judge McCormick with the agreement?

A. Yes. I want to correct what I just said that Mr. Clark was in the same office with me then. I had just moved down into my new quarters a short time, and he came downstairs, that's right.

Q. At this second conference who were present, Mr. Lee Arenas, Mr. Oliver, and yourself? A. Yes.

(Petitioner's Exhibit No. 4)

Q. Was the conference extended or short?

A. Short.

Q. Would you mind summarizing the gist of the conference?

A. The gist was we would have to get into agreement for a written contract so that we could have the authority to go ahead and represent him, he saying at all times he didn't have money to pay lawyers, that we would have to look to the property to get our pay.

Q. You would have authority—what do you mean? Was any mention made in that conversation about regulations of the Government?

A. Presume there was, I couldn't remember that detail now.

Q. You don't remember what representation or mention was made? A. Not specifically.

Q. You were there approximately two hours before Judge McCormick? A. Practically.

Q. Was there a reporter present?

A. I can't remember.

Q. Was there a clerk present? A. Yes.

Q. At the close or conclusion of that session were any documents signed by Mr. Arenas or by you? Or by Judge McCormick? I mean, other than the document consisting of twelve pages, and a copy of which has been furnished to the Government?

A. None other—that is, outside of what the Court might have—these two copies were signed in the court room. Lee Arenas signed, I signed, and then Judge McCormick signed, and I think Mr. Zimmerman signed them.

Q. That is the document that makes up these twelve pages? A. Yes.

(Petitioner's Exhibit No. 4)

Q. Your testimony is, however, that other than those twelve pages, nothing else was signed by either you or Mr. Arenas or the Court that you recall?

A. Not at that time.

Q. Who prepared the document called the "agreement"?

A. I prepared the rough outline, then Oliver Clark and I went over it together, and he detailed it, and it was probably edited three or four times before its final form.

Q. Was it ultimately drafted in your office and under your supervision? A. Yes.

Q. Was it discussed with Mr. Arenas before you went with it to Judge McCormick? A. Yes.

Q. Where?

A. I don't remember. The first conference was out at his home under a tree, with Mr. Clark and me. We called on him, or in my office, I don't just remember, we had two or three conferences over the matter. Mr. Clark was in on a couple or three of them, and a couple of them I went over the outline with him myself, explaining it in detail.

Q. Was Mr. Clark present when these conversations took place? A. Two or three of them, yes.

Q. With reference to the provision that appears on the first page, lines 11 to 16, and which recites that the first party—that would be Mr. Arenas—"hereby contracts with, retains, and employs the party of the second part as attorney in the matters hereinafter mentioned, subject to the approval of the Commissioner of Indian Affairs, and the Secretary of the Interior, pursuant to Section 2103 of the Revised Statutes of the United States

(Petitioner's Exhibit No. 4)

of America," what did you state to or explain to Mr. Arenas?

A. I can't give you the details, but the sum and substance was that if I was to do his work I wanted a contract executed by him and approved by the Court, whereby fees could be obtained later on if and when litigation turned favorable to him, that's the gist of it.

Q. Did you or did you not tell him that the agreement would not be effective until it was approved by the Commissioner of Indian Affairs or until it was approved by the Secretary of the Interior?

A. I told him I would send the contract in to be approved, which I did after the Court had approved it here.

Q. Yes, Mr. Sallee, but did you tell him that it would not become effective until approved by the Commissioner of Indian Affairs or the Secretary of the Interior?

A. I didn't tell him, because in my opinion it was effective all the way through.

Q. Is it your recollection that, at the hearing before Judge McCormick, that particular clause was referred to either in interrogating Mr. Arenas or in speaking to the Court, or making representations to the Court, or answers to questions of the Court?

A. I didn't go into details of the contract, but Judge McCormick took the contract and read it paragraph by paragraph and interrogated Mr. Arenas himself.

Q. Mr. Clark was not present?

A. No, he was in a trial and couldn't be there.

Q. And Judge Preston wasn't associated in the case then?

A. No.

Q. Was there any reason why you were the only one who was named? I mean, was there any reason expressed

(Petitioner's Exhibit No. 4)

by you or Mr. Arenas or by Mr. Clark, or anyone else, as to why you were the only party—

A. The only explanation is this: Tom Sloan and I had known each other in the past. Tom came down to ask me to be associated with him in the Ste. Marie case, that was the first time Oliver knew anything about the Indian case. Tom told the Indians out there that I was to be associated with him, and when Lee later came into the office that was the first time I met him after I had been out there interviewing the other Indians at the request of Tom Sloan. Lee Arenas said to me: "I have been wanting to meet you. Me hear lot about you. Me want you my lawyer. Me want you file my case for allotment." I said: "All right, I will do it." I don't remember whether Mr. Clark—if I called him and he came in at the first conference or not, I doubt it, but the next conference he was in on. But at the request of Mr. Clark he told me "you take that contract in your name, it would be easier for you to handle all the details here because you won't have to hunt me up for signatures, but you have the power of your associates anyway, you take the contract in your own name."

Q. Going back to the hearing before Judge McCormick—so far as your recollection serves you, having in mind it has been quite a while, did Judge McCormick interrogate you or Lee with respect to the paragraph which is the second paragraph of the agreement, and which refers it to being subject to the approval of the Commissioner of Indian Affairs and the Secretary of the Interior pursuant to Section 2103 of the Revised Statutes?

A. I don't remember any specific questions at this time.

(Petitioner's Exhibit No. 4)

Q. Between the 20th of November, 1940 and 1st of February, 1945, were there any other writings which were executed by Mr. Lee Arenas and you, or Mr. Lee Arenas and you and Mr. Oliver O. Clark, or Lee Arenas and you and Mr. Oliver O. Clark and Judge Preston which were in the nature of agreements for employment, as distinguished from correspondence or checks or remittances or bills?

A. On February 1, 1945 the modified contract was signed.

(Judge Preston: The question is between the time—)

A. Between the time, no.

Q. I note that the duplicate original, which Judge Preston has handed me, as well as the copy which was furnished to me, discloses the affixation of a stamp of the Office of Indian Affairs on page 1 between lines 8 and 11, which reads: "Office of Indian Affairs, received January 14, 1941," and there is also impressed in heavier type the numbers 2520. So far as you know, was both that stamp and number impressed by the Office of Indian Affairs?

A. So far as I know.

Q. Prior to that date was one of these documents, or more of them, mailed to any official of the United States Government?

A. On January 2, 1941, I handed to Carl Spinner, Principal Clerk in Charge, at the Riverside Agency, a letter, together with three of these copies, all executed by Lee Arenas, and all executed by Judge McCormick, and attested by the clerk, and signed by me.

Q. Do you have in your hands a copy of the communication?

A. Yes.

(Petitioner's Exhibit No. 4)

Q. I note that this carbon copy of letter dated January 2, 1941, is addressed to Mr. John W. Dady, Superintendent, Mission Agency, Riverside, California, and said in re Lee Arenas, etc., and has a stamp mark "Received January 9, 1941, Mission Agency", with the signature of Carl Spinner, and stamped "Carl Spinner, Principal Clerk in Charge". The receipt stamp, together with Mr. Spinner's signature, was affixed in that office in your presence?

A. Yes.

Q. Will you undertake to have some copies made, please, for the purpose of this matter, noted as Exhibit 1?

A. Yes.

Q. Now, Mr. Sallee, between November 20, 1940 and January 9, 1941, which was the date of the receipt of the letter of January 2, 1941, which we have just marked Exhibit 1, were there any other letters or other form of writings executed by you, or to your knowledge by Mr. Clark or anyone else as your associate, directed to any official of the United States Government in respect to this agreement of November 20, 1940?

A. Not that I remember right now.

Q. Did you receive any communication in writing from any representative of the United States Government in response to the letter of January 2, 1941, and with relation to the document designated "Agreement" and dated November 20, 1940?

A. Yes.

Q. Do you have that?

A. No, I would have to locate it.

(Petitioner's Exhibit No. 4)

Q. Without precisely fixing it, can you state approximately how long after January 9, 1941 you received the communication and from whom?

A. Probably a year or so, because I had from time to time asked Mr. Dady if he had heard anything, and he said "no", and on November 11, 1942, I addressed a letter to him, and on November 16, 1942 I sent another letter to him about it. It was some time later that—I can't say how long—that I received a letter from Washington relative to it, and I have endeavored to find that letter, but have been unable to find it to date.

Q. As I recall your statements, it would have been after November 16, 1942? A. Yes.

Q. Do you recall from whom you received the communication?

A. It was one of the officials in the Department.

Q. The Department of the Interior, Indian Affairs?

A. Yes, Indian Affairs I think, the department that handles contracts.

Q. Do you recall, generally, the contents of the communication?

A. Just the substance. That they had refused to accept my contract at this time, stating that this litigation was on and that if favorable, the contract was good against Lee Arenas anyway. However, as I remember, it was not an absolutely flat denial, except in substance "we can't approve it" and went on and stated that it was a one-page letter or page-and-a-half, I can't just remember exactly.

Q. You have stated that prior to your receipt of that communication, the substance of which you have just given to the best of your recollection, you had delivered

(Petitioner's Exhibit No. 4)

or mailed to Mr. Dady two other communications. Do you have carbon copies of them? A. Yes.

Q. Mr. Sallee, you have shown me a carbon copy of a communication dated November 11, 1942 to Mr. John W. Dady, Superintendent of the Indian Agency at Riverside, the original of which you delivered to Mr. Dady. You have also shown me a copy of a letter addressed to the Department of the Interior, Office of Indian Affairs, dated November 16, 1942, Washington, D. C., in re Lee Arenas vs. United States of America, and that communication was mailed through the United States mails to that office?

A. Yes.

Q. May these be annexed as exhibits, Exhibits 2 and 3 please? A. Yes.

Q. Mr. Sallee, when you received this reply that you have roughly described, did you communicate its contents to Mr. Clark? A. Yes.

Q. Did you communicate its contents to Judge Preston at any time?

A. At that time he wasn't in the case. I don't know whether I told him they had been turned down or not.

Q. I have written to the Department to see if they could dig up for me the originals or copies of certain correspondence. I am assuming that they will dig up this communication. May it be stipulated between us that if I get it in time I will submit it to Mr. Sallee, and it may then be incorporated in lieu of his oral statement after he has identified it?

A. Yes. One further statement. As I remember, in that letter, it was a letter subsequent to that, they retained one copy there for their records. They do have one of these copies there.

(Petitioner's Exhibit No. 4)

Q. Following the receipt of that communication and prior to the time that you received the three duplicate originals from the office of Indian Affairs—they having retained one copy as you have just stated—did you have any further written communications with the Office of Indian Affairs or with any official of the Department of the Interior or any other official of the United States Government in connection with this particular matter and the document dated November 20, 1940?

A. I can't answer that definitely. I did have some correspondence with one firm of lawyers in Washington relative to it. I am going through my files, getting this in chronological order so that I can give it to you.

Q. Is it the import of your last answer that you attempted to make arrangements with some local representatives in Washington, D. C. to contact one or more Government representatives in connection with this matter?

A. I started out to have someone represent me there so that I would not have to make a trip back there.

Q. You did not obtain that representative?

A. No, that's as far as it went.

Q. Did you have any oral conversation with any representative of the Government in connection with this document dated November 20, 1940, following the receipt of the communication which you have been unable to describe?

A. None other than with Mr. Dady at Riverside.

Q. Approximately when was that with reference to when the documents were returned to you—before or after?

A. Before and after both, because from time to time I would see him, and I would bring up the question.

(Petitioner's Exhibit No. 4)

Q. And what was the gist of the question?

A. What the dickens was the matter that they wouldn't come through in a decent way with the approval of those contracts!

Q. What was Mr. Dady's reply?

A. He didn't think we had a good case, that was the sum and substance of it.

Q. Was anybody present besides yourself and Mr. Dady? A. No.

Q. At the time you received the communication, which you have roughly described but have not been able to locate and produce, did you at the same time and with that document receive back the two originals?

A. The originals came back later.

Q. Briefly, my question was—when they were returned to you, were they accompanied by any written communication from the Government?

A. Yes. I think a short letter saying "we are returning herewith the two original contracts", something like that.

Q. Do you have the communication in your file?

A. I should have it. I will give it to you. I didn't have a chance to get my things together.

Q. May it be stipulated that if Mr. Sallee can locate it, that a copy may be annexed and marked Exhibit 4 to this statement?

(Mr. Preston: And also to the other communication, the contents of which he has described.)

(Mr. Clark: It is agreeable.)

Q. Mr. Sallee, when Mr. Arenas executed this document dated November 20, 1940, did he deliver to you any monies? A. No.

(Petitioner's Exhibit No. 4)

Q. At any time thereafter and up to the present time did Mr. Arenas deliver any monies to you?

A. Different amounts from time to time, yes.

Q. Have you made a practice, Mr. Sallee, of keeping a book record of this account? A. No.

Q. Have you any form of written form of memoranda or record of amounts which were delivered in your hands either directly by Mr. Arenas, or so far as you were informed, purported to be made by or for Mr. Arenas in connection with this particular case?

A. I am getting, as soon as I can, a statement of those amounts, going over my receipt books and paid bills.

Q. You mean you are having it transcribed?

A. No, I can give you a detailed statement of it, see what it amounts to.

Q. And are you also intending to make a detailed statement, so far as you can, of what amounts you expended from the amounts you received? A. Yes.

Q. May it be stipulated, gentlemen, that as soon as Mr. Sallee has accomplished that result, that a copy of that statement can be annexed and marked as the next exhibit in order? A. Yes.

Q. Would you have any objection, Mr. Sallee, to making just a short written certification to the best of your recollection and information that these consist of all the amounts expended in behalf of this litigation? I don't know if you are required to do it or not, but—

A. I reserve that until I get it made up.

Q. If you decide that you are agreeable, may it be added to the exhibits? A. Yes.

Q. So far as you are informed, Mr. Sallee, were any monies obtained or received from Mr. Arenas directly or

(Petitioner's Exhibit No. 4)

indirectly, and by indirectly I mean advanced or made available by someone else purporting to act in behalf of Mr. Arenas, to anyone other than yourself in connection with this particular litigation?

A. That I don't know.

Q. So far as you know, was any compensation, in any form, either money or any other form, paid to any person other than yourself, up to the present time, by Mr. Arenas, directly or indirectly, aside from advances or costs and expenses which you intended to set forth in your account?

A. Not that I know of, I couldn't tell you what has been done.

Q. Have you received any monetary payment from Mr. Arenas, directly or indirectly, to be applied on account of fees as distinguished from costs and expenses?

A. No.

Q. Now, have you ever, at any time, prepared an offer to furnish or submit to Mr. Arenas personally, or to anyone in his behalf, any record of your account in the way of a statement or voucher in respect to the expenses which you incurred and paid?

A. That question has never arisen at any time.

Q. It is stated in the document dated November 20, 1940, commencing on page 5, line 24, and ending on page 6, line 14:

"It Is Further Understood that in event the Party of the Second Part, or his associates who are actually associated in the litigation and investigation as aforesaid, shall advance any necessary expenses, they shall be reimbursed by the Party of the First Part, from the property recovered, such actual expenses as are

(Petitioner's Exhibit No. 4)

strictly necessary or proper in connection with the printing of briefs, court costs for proceedings and other similar matters, and to include such actual and necessary traveling expenses, clerical hire, stenographic expense, and the like as may be properly required for the prosecution of said case, or cases; provided that all such expenditures shall be itemized and verified by the Party of the Second Part, and shall be accompanied by proper vouchers, and shall be only upon the approval of the Secretary of the Interior, or an officer designated by him who shall certify the same."

Have you at any time prior to the filing of the Petition or at any time subsequent to the filing of the Petition and up to the present moment, prepared any vouchers or other writings setting forth the detail of expenditures made by you, and verified the same and submitted them for approval to the Secretary of the Interior? A. No.

Q. Or submitted them for approval to any other official that the Secretary of the Interior had designated?

A. No.

Q. Have you ever requested the Secretary of the Interior to designate any official? A. No.

(Mr. Preston: That would be only if you wanted to collect them.)

Q. It is provided in the same document dated November 20, 1940, Mr. Sallee, commencing on page 6, line 15, and ending on page 7, line 13, as follows:

"It Is Further Understood and Agreed by and between the parties of this Agreement, that in event of a misunderstanding as regards the manner in which the compensation to the Party of the Second Part

(Petitioner's Exhibit No. 4)

from the Party of the First Part shall be paid; and Trust Patents or receipts have been issued, and in that event the Party of the First Part shall thereupon make application for a removal of restrictions upon sufficient of the premises to be sold, and from the proceeds of said sale or sales to pay said Party of the Second Part; that in event it is not for the best interests of the parties hereto to sell said land, the removal of restrictions shall be applied for upon properties coming to the First Party, as selected by said Second Party, upon the basis of one-tenth of the property—That is to say, Second Party shall select one property that does not exceed ten per cent of the total value of all properties, and that First Party shall select nine properties that do not exceed ninety per cent of the total value of said properties, and continue to make such selections until all property shall have been selected. That the property selected by the Second Party shall then be deeded to said Second Party, subject to the approval of the Secretary of the Interior and the Commissioner of Indian Affairs.”

Was that paragraph discussed between you and Mr. Arenas before he signed it? A. Yes.

Q. What did you tell Mr. Arenas?

A. I explained the wording of it, and it was also explained by Judge McCormick to Mr. Arenas.

Q. You at that time, Mr. Sallee, were somewhat well grounded in the Indian law that existed, were you not?

A. Just fair.

Q. You had made examinations of the law?

A. Oh yes.

(Petitioner's Exhibit No. 4)

Q. Had you not discovered that the particular property was covered by express provisions of the Congress so that the restrictions could only be moved by the Department of the Interior? A. That's right.

Q. Did you so inform Mr. Arenas? A. Yes.

Q. And you so informed Judge McCormick? In answer to his question?

A. I informed him, and he also made that very same statement.

Q. Has any trust patent been issued as to these lands? (Mr. Preston: They don't have to. The law says a certified copy of the decree is a trust patent.)

Q. Assuming that Judge Preston's statement is correct, have you made any application in any form in behalf of Lee Arenas for release of restrictions on this property?

A. Not at the present time.

Q. Have you made any selections of any portion of the properties which were the subject matter of the judgment in this case as at least your anticipated selection?

A. No.

Q. Have you requested Lee Arenas to make any such selection?

A. Haven't been able to get to see him lately.

Q. Have you communicated with him in an effort to arrange for such selection?

A. No, not by written communication.

Q. Have you in any manner, either orally or in writing, presented to the Secretary of the Interior or other Commissioner of Indian Affairs, a request for approval of any such selection? A. No.

(Petitioner's Exhibit No. 4)

Q. Have you made any assignment orally or in writing of your interest in this agreement to anyone?

A. Just my associates, that I would give them an interest in it.

Q. That was in writing?

A. No, I walked off and forgot it, I had three copies made.

Q. When were the assignments made?

A. When Judge Preston came into the case, I forget the date, Mr. Clark dictated the assignment.

Q. They were in writing and signed by you and delivered to Mr. Clark and Judge Preston?

A. They were put in a file that Mr. Clark and I had, and not to Judge Preston, because Oliver said he had them at one time, he put them in that file.

Q. Were those assignments submitted to either the Commissioner of Indian Affairs or the Secretary of the Interior? A. No.

Q. Were they ever requested to consent thereto?

A. No.

Q. Of course their consent was never obtained?

A. No.

Q. With reference to two documents which I believe are identical in their text and are both dated February 1, 1945, identical with the exception that one is signed by Lee Arenas and the other by Marion Therese Arenas. Judge Preston has furnished me with copies of such documents and has exhibited to me the originals. Who drew up those documents?

A. I started the draft of those, and the same way with the original contract, it was redrafted four, five, or six

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times by Mr. Clark and myself, and the final draft was his redraft of the one that we had done before that.

Q. Were these documents signed on the day they were shown, February 1st? A. Yes.

Q. And were you personally present when Lee Arenas and Marion Therese Arenas signed them?

A. I was. And so was Mr. Clark.

Q. Where were they signed?

A. In my office in Los Angeles.

Q. Was Lee present at the same time, and did they sign in each other's presence? A. Yes.

Q. That was the day following the conclusion of the trial, the second trial, before Judge O'Connor?

A. I don't know—the day following or during the trial.

Q. I think the Statement of Facts shows that that trial was conducted on January 30th and 31st.

A. Let me clarify that one date, since you called my attention to the other. The notary on that is Benton Beckley. Mr. Beckley was at the trial, and whether or not he put his signature on that the day they were actually signed in my office, I do not remember. I know I handed them to him to be notarized. The four of us were sitting there, Mr. Clark, Mr. Arenas, Benton Beckley, and myself. We were all in my office and we had discussed with Lee before that the provisions of this modified contract and the reasons why, and he had agreed to it. That was done some little time before that. Mr. Clark had been quite emphatic in getting all of those details before Mr. Arenas' attention so that he would thoroughly understand it, and the reason why we were asking for a larger percentage, and after it was all explained to Arenas he was perfectly satisfied and so was Marian Therese Arenas at

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that time. It might have been signed on February 1st or the day before, I don't remember exactly, and whether my day book will show that I don't know. The notary might have put that date in there himself, I don't know. That's the point I want to bring out.

Q. Lee Arenas was present and testified at the trial, and also Marian Therese Arenas? A. Yes.

Q. And was Beckley present too? A. Yes.

Q. Did he testify?

A. I don't think so. Benton Beckley had done a lot of work for the Indians and quite a lot for Lee, and whenever they needed him or anything was going on, he was on hand.

Q. Is it your testimony that you were present when these signatures were acknowledged by Benton Beckley?

A. I don't remember if he put his seal on in my presence or not, I know he signed in my presence. I don't remember about the seal.

Q. Now, what conversation did you have with Lee, that you have just referred to, shortly before he and his present wife signed the documents which bear the date February 1, 1945, respecting the reasons for the execution of such documents?

A. Most of that conversation was conducted by Mr. Clark and Mr. Arenas after I had opened the question.

Q. Mr. Clark was present? A. Yes.

Q. Where was the conversation?

A. We had several, some in my office, and I think one or two in Palm Springs.

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Q. And in every instance was the present Mrs. Arenas present?

A. I can't swear to that—I can't say whether she was in on all of them at Palm Springs. Some times I would see Lee and she wouldn't be at home, but in my office she was there.

Q. I assume, Mr. Sallee, that Lee Arenas wouldn't know what quantum meruit meant? Or did you tell him?

A. Yes I did. And so did Mr. Clark.

Q. What did you tell him?

A. The reasonable value for services—that the Court would set the fees accordingly.

Q. I don't like to lead an attorney, but—

A. I am a poor witness, I know.

Q. As a part of that conversation, did you tell him that it was the considered opinion of you gentlemen, in view of what had been done and was needed to be done, that ten per cent would not be a reasonable fee?

A. Correct.

Q. Did you tell him what would be a reasonable percentage? A. I did not.

Q. Did Mr. Clark?

A. Not in specific figures, no.

Q. Did Mr. Arenas or his wife ask? A. No.

Q. Had Judge O'Connor made any statement in the court proceedings of January 30th or 31st, and prior to the time that this document was signed, in which he had announced his conclusion as to what way he would find?

A. Not to my knowledge.

Q. Other than your belief that you had a good cause and such other conclusions as you might draw, you had

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no definite indication or knowledge how far this matter might go? A. That's right.

Q. You stated a moment ago that Mr. Clark had, on several occasions, indicated clearly to Mr. Lee Arenas that the previous arrangements were unsatisfactory in amount, and for that reason you had to have some other arrangement? A. That's right.

Q. Did Mr. Clark express either in money or percentage, or in any other comparative form, what he and you ever contemplated to be fair and proper as compared to the previous agreement?

A. I never heard him quote a figure. He made the statement: "You know, Lee, we are having to do considerable extra work, and Judge Preston is in the case now, and we have to make arrangements to take care of these fees in a proper way."

Q. Judge Preston conducted the second trial?

A. Yes.

Q. In this particular one-page agreement with Lee Arenas and also the same document with Mrs. Arenas, there is this statement in the last line of the first paragraph thereof: "All to be subject to the rules and regulations of the Department of the Interior." So far as your recollection goes, was any discussion had with Lee respecting that sentence and the import thereof?

A. Not that I remember.

Q. Was this document dated February 1, 1945 ever submitted to any representative of the Government?

A. No.

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Q. I take it, then, no request was made for approval or consideration? A. No.

Q. And that document was not submitted to any Judge? A. No.

Q. Mr. Sallee, other than the three writings, the one dated November 20, 1940, in which you are named as second party, and which bears the signatures of Lee Arenas and yourself, and the two duplicate documents, each dated February 1, 1945, which are identical except as to the name of the client, one of which was signed by Lee Arenas, and the other by Marian Therese Arenas, were any other writings executed by you and by Lee Arenas covering or purporting to cover an arrangement, contract, or agreement for legal services in connection with this property? A. No.

Q. Mr. Sallee, at the time that you entered into this first instrument or agreement with Mr. Arenas, either immediately on that date or as a part of the surrounding circumstances, did you get similar contracts from other members of the Band and receive compensation from them as a part consideration for this transaction?

A. Referring to November 10th? November 20th? No.

Q. In other words, you did not receive from any other member of this Tribe or from someone in their behalf, any fees or advances in connection with the Lee Arenas case?

A. From time to time contributions towards costs on this, but no fees.

Q. I think that's all, Mr. Sallee.

(Petitioner's Exhibit No. 4)

INTERROGATION BY MR. BRETT OF
MR. OLIVER O. CLARK

Q. Is there any difference, Mr. Clark, that you can now recall, in what your answers would be in so far as what took place in any conversations in which you participated than as stated by Mr. Sallee?

A. Yes, in several instances. I noted as he testified conversations were had that I recall which he did not testify to, and some things were just a little bit different as he recalled them in so far as my participation is concerned.

Q. With that in mind, I will ask a few questions. When were you first informed about this matter? When did you first take active part?

A. Late June, in the year in which the suit was filed. I think 1940.

Q. And were you introduced to Mr. Arenas by Mr. Sallee?

A. Not at that time. I was later. My best recollection would be during the first two weeks of July.

Q. And where did you first meet Lee Arenas?

A. In Dave Sallee's office.

Q. Were there conversations at that time with Mr. Arenas? A. Yes.

Q. Who were present?

A. Dave Sallee and myself and Lee Arenas.

Q. And the woman who is known as Marian Therese Arenas was not present at that time?

A. I think not, not until a considerable time later.

(Mr. Sallee: At that time Lee Arenas wasn't married, when we first handled the litigation.)

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Q. Mr. Clark, I am not intending to interrogate you concerning the general setup of your work—just as set up in the Statement of Facts—only with matters that concern the ultimate arrangements and execution of the agreement of November 20. I will ask you then: At that particular time was the matter of employment by Mr. Arenas and of the compensation for such employment discussed with Mr. Arenas?

A. As to the employment, yes. Compensation, no.

Q. Will you briefly state your recollection of what was said at that time?

A. Yes. Lee Arenas shook hands with me and said: "Mr. Sallee tell me you help on my case." And I told him that I was just beginning to make a study of a great deal of material that they had begun to furnish me, and would furnish to me, and that if, when I had occasion to look more fully into that material, I felt that he had a reasonable chance to win the case, I would then associate with Dave Sallee in the case for him.

Q. I take it then, that, so far as that particular conference was concerned, that is as far as it went with respect to employment? A. That is true.

Q. When, with reference to the agreement dated November 20, 1940, did you next have a conversation with Mr. Arenas?

A. I had several conversations with him, both in Los Angeles and at his home in Palm Springs, about the facts of his case, but nothing further as I now recall with reference to compensation until perhaps within a week or so of the time when the first contract was signed.

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Q. And that was after the Supreme Court had denied the certiorari, because it was out of time in the Ste. Marie case?

A. I don't remember the instances now in their order, but it seems to me that certiorari was denied in early October, and this contract, as I recall, was executed in November, and we filed our suit in December.

Q. Now, when you had this conversation that was shortly before the document dated November 20, 1940 was executed, where did you have it?

A. The first one at Palm Springs, and the second on the date when the contract was signed in Dave Sallee's office.

Q. With reference to the Palm Springs conference, where was that?

A. At his home, with Dave Sallee, Lee Arenas, and myself.

Q. And will you briefly outline the conversation?

A. I told Lee that I had examined all of the data that had been submitted to me and had rather exhaustively researched the law involved, and had also discussed the matter with John Steven McGroarty, who was active in behalf of the Indians, and had determined that I would be willing to accept association with Dave Sallee to bring the suit, and that it would be necessary for us to have some contract in writing with him, Lee Arenas, covering our employment. This was the conversation at Palm Springs, and I told him that it seemed to me that from the information I then had that ten per cent of the amount recovered would probably represent a fair compensation, and that if this met with his approval I would proceed with the preparation of a contract, and he then could come to Sallee's office at Los Angeles for its execution. Sub-

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sequently, at Dave's office, I discussed with Lee Arenas and Dave the contract that had been prepared. I do not have any present recollection whether the contract was then signed in Dave's office or whether at a shortly later time it was signed at Palm Springs, but I do remember that I was present when Lee Arenas signed, and I asked him after having read it to him, if he was satisfied with it.

(Judge Preston: Do you think the contract was not signed in the court room?)

A. I am not sure. Frankly, I have in mind that I had drafted a writing that had been signed by Lee Arenas, but that is not the writing that was submitted to Judge McCormick. I was not present when the writing in the form as you have it was signed, because that was in Judge McCormick's office. My recollection is that after this first writing was signed by Lee Arenas, Dave stated that he had discussed the matter with Mr. Collett, and that Mr. Collett had suggested that Lee ought to be taken before a Federal Judge, and I told him I had no objection to that. It is my recollection, therefore, that the writing which was signed by Lee, as I have testified, was destroyed, a new writing was prepared, and that was taken by Dave and Mr. Collett to the Federal Court, but I was not present when that happened.

Q. Mr. Clark, having in mind the possibility, in view of your most recent statements, that the document dated November 20, 1940 is not the same document as you saw signed by Lee Arenas—

A. I know it is not.

Q. Were the provisions substantially similar?

A. In substances, yes, but not as I recall all of the recitations about the regulations of the Indian Department and the Interior Department.

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Q. Those were added?

A. Yes. The reason I make that statement is because I never had any confidence from the beginning that the Government or any department would ever approve any contract for the employment of any lawyer to file that case, and I told Dave that I wasn't interested in spending one minute of my time on it, but that I had no objection to Dave and Collett doing whatever they thought might be desirable to obtain such a consent, but that as far as I was concerned I was going to base the recovery of my compensation upon my belief that in the circumstances of that case, in the event we won, the Court would find that we were entitled to a reasonable compensation for what we accomplished payable out of the property involved.

Q. Mr. Clark, you have several times mentioned a Mr. Collett, and so did Mr. Sallee. It is my recollection that in the various instruments which were offered in evidence in your second trial there were documents which bore the name of some Government official by the name of Collett. Is that the same man?

A. I don't think so. I met this man four or five times and had brief conversations with him, and the man I had in mind was not then a Government agent, he was interested in Indian affairs for a long time, as I was told.

Q. Following the date when you were informed, and you have now learned, that Mr. Arenas and Mr. Sallee appeared before Judge McCormick, were you informed of that fact and of the execution of the document?

A. Yes.

Q. Were you informed as to the contents as it had been redrawn?

A. Yes, I saw it.

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Q. And you then performed whatever services you did under arrangements that you made with Mr. Sallee under that agreement?

A. Until the subsequent agreement was agreed upon.

Q. That is between November 20, 1940 and February 1, 1945, you had no separate arrangement with Mr. Lee Arenas?

A. I never had any separate arrangement with Lee Arenas, but I did negotiate with him for a change in the basis of our compensation many months before the second writing was executed, and in fact at about the time Judge Preston came into the case.

Q. And that was at the time that the consultations were had which led up to the petition for certiorari in the Supreme Court?

A. That's right.

Q. At that time you had one or more conversations with Lee Arenas?

A. You mean at the time the petition for certiorari was in prospect?

Q. It may be that the time was identical, but I had reference to your earlier statement that you had had a number of negotiations leading up to the second agreement prior to its execution.

A. Yes, and they began at the time when the preparation for certiorari was in prospect.

Q. In connection with those conversations, who were present?

A. Lee Arenas and myself on some of the occasions, and Dave Sallee on others.

Q. And where were they?

A. Some at Palm Springs at the home of Arenas, and others at Dave Sallee's office.

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Q. Were any others present besides Lee Arenas, Dave Sallee, and yourself?

A. I have in mind, but indistinctly, that Mr. Arenas was there on one of the occasions when I went to Palm Springs alone. By that I mean without Dave. Then later and before the contracts were signed, Mrs. Arenas was with Lee in Dave's office, and I was there too.

Q. Just so there will be no question about it, Guadalupe was deceased, and the Mrs. Arenas you now refer to is the one who signed the document on February 1, 1945, Marian Therese Arenas? A. Yes.

Q. Will you briefly state the gist of these conversations leading up to the new agreement?

A. When it became necessary to petition the United States Supreme Court, I went to Palm Springs and talked with Lee. I told him that it would be necessary for me and Dave to go to Washington and be admitted to the Supreme Court before we could file a petition for certiorari, but that I felt, in view of the importance of the litigation and its then condition, that it would be very much to his advantage to employ another lawyer who had had experience in practice in the United States Supreme Court, and that I had spoken to Judge Preston, who had formerly served in the State Supreme Court on the bench and who had also served the Government in several important capacities, and that I had come to recommend to him that Judge Preston be employed in association with Dave and myself for the purpose of the petition to the United States Supreme Court and the conduct of the case thereafter if we won in that court. I told him that this would, of course, mean the payment of additional compensation to the lawyers, and that I had not discussed with Judge Preston what his fee would be, but if the plan

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met with Lee's approval I would do that and talk with him further. Lee told me that he would be very glad for that to be done and for me to go ahead. I then returned to Los Angeles and presented the matter in detail to Judge Preston, and as I recall, a period of at least two weeks elapsed, because Judge Preston was rather reluctant to engage in the litigation, but I continued to press the matter. He made a trip to the North and upon his return called me and said that he would be willing to be associated in the case. I then contacted Lee Arenas. It is my impression that Dave had called him to Dave's office and that Dave was present on this occasion. At the time I made this report I told Lee that Judge Preston had agreed to the association and that it would be necessary to prepare an additional contract covering our compensation, but that we were so busy in doing the things that had to be done in the case because we were working under a time limit, that I would not undertake to prepare that contract until other things had been attended to, but that when I did prepare the contract it would be upon the basis of a reasonable fee for the work done, having in mind what should be accomplished in event we won it, and the fee to be fixed by the United States District Court here, and I explained that to him in detail as to how it was fair, I thought, to us and fair to him, so that the Court knew exactly what the picture was and the Court then could say what was a reasonable fee to us and what was reasonable for Lee to pay. He told me it was perfectly fair and to go ahead and let him know when I wanted the new contract signed. The matter went on for a long time before I got around to the drafting of the contract with Dave, and then it eventuated into the signing of the later and last contract. When that contract was signed I read

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it to Lee and explained it to him, reminded him of the conversation that we had had before in reference to it, and Lee in substance said it was acceptable to him, and it was signed.

Q. When you contacted Judge Preston did you relate to Judge Preston, in substance, the representations and statements that you had made to Mr. Arenas, such as you have just stated?

A. I did relate to Judge Preston what I had said to

I [Mathes, J.]

Lee, and Lee said he had contacted Judge Preston before I suggested him to Lee.

Q. Before Judge Preston accepted employment you related to him, in substance, the statements you have just related? A. I did.

Q. Did you also disclose to Judge Preston the text of the agreement of November 20, 1940?

A. My recollection is that I brought a copy to Judge Preston's office.

Q. And left it with him, before Judge Preston entered into the employment of the case? A. Yes.

Q. At the time you commenced these conversations with Mr. Arenas looking toward a modification of the agreement of November 20, 1940, had you helped perform any legal services as counsel for Mr. Arenas in this case?

A. Yes. I had begun the suit and carried it through the Circuit Court and to the point where the petition for certiorari was required to be filed before I discussed with Lee the modification of the original contract.

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Q. Did you suggest to Lee Arenas that he obtain or seek or get the advice of any independent counsel before he modify the agreement?

A. No, I did not. I did suggest to him that he discuss the matter with the local Indian agent, whose name I now forget, at Palm Springs.

Q. Mr. Veith? V-E-I-T-H?

A. Yes, I believe that is the name. I had met him and heard of him and had every confidence in him, esteemed him very highly, and knew he was a friend of the Indians, and I asked Lee to talk to him about the advisability of doing the thing I had suggested.

Q. You knew Mr. Veith was not a lawyer, or did you believe at the time that he was?

A. No. That never occurred to me. I was thinking of him as a friend of the Indians and a man of such responsibility that the Government had made him the local Indian agent.

Q. Mr. Clark, so far as your knowledge serves you, do you know whether or not Mr. Lee Arenas obtained or sought any independent advice before he accepted your suggestions and signed the agreement of February 1, 1945?

A. That question calls for hearsay, but I can say this as to what I understood. I understood from John Steven McGroarty that he and some woman active in behalf of the Indians, had discussed with Lee Arenas and other Indians at the town of Palm Springs the possibility of doing the very thing that I suggested, namely, bring-

Judge Preston, and Mr. McGroarty [Mathes, J.]
ing in ~~John Steven McGroarty~~, between the time I first spoke to Judge Preston and the time when Lee Arenas finally told me to go ahead, called me to him home one

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evening and said to me that he thought the idea was one of the most brilliant things that had been suggested in the course of the litigation, and that he had talked with this woman, whose name I don't remember, but I can get it, and that Lee was satisfied and he knew that this was what was going to be done. I do remember at a later time I talked with Mr. Berry, the local agent, about it, and he congratulated me upon the fact that I had thought of doing it, and had been able to do it, namely, to get Judge Preston into the case.

Q. Did you tell Mr. Arenas, as a part of your conversation leading up to the signing of the documents dated February 1, 1945, that it was necessary for him to sign an agreement of that kind before further proceedings could be had in his case?

A. No. Our relations were such that if Lee Arenas told me to go ahead on the basis of our oral understanding, it was just as good as if it was in writing, and the fact that that contract wasn't signed until after we had gone through the United States Supreme Court and had come back here for the trial of the case—

Q. Did you tell Mr. Lee Arenas in any of the conversations following the effective date of November 20, 1940 and prior to February 1, 1945, that you could go no further with his case after the Circuit Court of Appeals had affirmed the summary judgment unless he would execute an agreement covering a larger fee? A. No.

Q. What did you tell him in that respect?

A. I told him I thought it was advisable that Judge Preston be associated in the case, but that if he did not agree to it I would go to Washington and become admitted to the Supreme Court and file the petition while I was

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there, because I at all times had in mind that if Judge Preston would not become associated I would go ahead with the litigation through the Supreme Court.

Q. Did you contemplate that if you had gone through with the litigation to the Supreme Court and had obtained a reversal of the Circuit Court opinion that you would conduct further proceedings in whatever courts might be required until the trust patent was obtained?

A. I did. In other words, I assume you want to know if I at any time suggested to Arenas that if I and Dave would go ahead without any additional lawyer, we would expect any compensation in addition to what our original contract provided for. No, I never had that in mind. I never suggested it to Arenas and the only reason the new contract for compensation was made was because of the additional services that we were able to obtain from Judge Preston being in the case.

Q. Did you personally receive any monies in the way of fees, either directly or indirectly, from Lee Arenas for costs and expenses in the case?

A. Only through Dave Sallee, and not then to the extent of what expenses I incurred.

Q. Do you keep books of account on your cases?

A. Not on that case. My fee was entirely contingent. The only expenses I received was when we went back to Washington to argue the case in the Supreme Court. Dave gave me the money for that, and then again when we went to San Francisco to argue the matter in the Cir-

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cuit Court on the Government's Appeal he gave me the expense money for that.

Q. You refer to Judge Preston and yourself?

A. Yes. Otherwise Dave handled the payment of expenses, not I.

Q. You don't know, then, from what source the money came?

A. No, excepting as Dave told me, and the Indians told me contributions were made in part by Lee Arenas and his wife, and in part by some of the other Indians.

Q. Did you ever present either the agreement of November 20, 1940 or the agreement, or either of them, of February 1, 1945, or any other writings which were directed to, and the contents of which evidenced some form of negotiations or agreement for your employment as counsel with Lee Arenas, to any representative of the Federal Government? A. No.

Q. You never obtained any approval?

A. None whatever.

Q. Aside from the document dated February 20, 1940 and the two documents dated February 1, 1945, were there any writings which you know of which were executed by Lee Arenas and which you purport to have acted under as employment contracts?

A. None except the first, which was only effective at most for a few days and torn up, and superseded by the one presented to Judge McCormick.

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Q. And that was done with Mr. Arenas' consent?

A. Yes.

Q. Did you have any personal written communications in connection with either of these agreements or contracts or in connection with your employment or activities in behalf of Lee Arenas, with any representative of the Federal Government?

A. None whatever.

Q. Have you ever submitted a statement, account, or any other form, of rendering of a voucher or claim, for your services in this case to any representative of the Federal Government aside from the joining in the petition?

A. No.

Q. Have you ever received, either orally or in writing, any communication from any representative of the Federal Government which either expressly or impliedly informed you not to make any such application or to render any such statement?

A. No.

Q. Were you present when Mr. and Mrs. Arenas signed the documents dated February 1, 1945?

A. Yes.

Q. Where did they sign them?

A. In Dave Sallee's office.

Q. Were both of them present at the time they were signed—did they sign in each other's presence?

A. Yes.

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Q. Was Mr. Benton Beckley present?

A. My recollection is that he was. He seems to me to be the one who came to my office and said Lee Arenas and his wife are down there waiting for me.

Q. Do you know definitely the date on which they signed was February 1, 1945?

A. No, I have absolutely no recollection of that.

Q. Did you see any formal acknowledgement of their signature before the notary?

A. I have absolutely no recollection of that.

Q. Did you have knowledge, either by communication from Mr. Sallee orally, or by being disclosed to you through the writings, that the document dated November 20, 1940, had been submitted to the Office of Indian Affairs?

A. Yes, I did.

Q. And were you likewise informed that at some date, not definitely fixed here but approximately in 1942, the United States, through the Office of Indian Affairs, had refused or declined to approve the contract?

A. I was told by Dave Sallee and shown the letter that they had refused to take action upon them, and had returned the contracts.

Q. Did you communicate with Judge Preston?

A. I don't remember.

Q. I think that's all, Mr. Clark.

OLIVER O. CLARK

(Petitioner's Exhibit No. 4)

INTERROGATION BY MR. BRETT OF MR. JOHN
W. PRESTON

Q. As I understand it, the first time you came into the matter was when your services were solicited by Mr. Clark? A. That's right.

Q. And that at that particular time did you meet Lee Arenas, or was it at a later period?

A. Much later I think.

Q. You have heard Mr. Clark's statements that have just been made? A. Yes I have.

Q. Would you add to or change any of those statements?

A. I have nothing to add. Some I recall, and some I don't.

Q. We made provision here that if there are to be any corrections, they will be made, and if—

A. The Statement of Facts that I have delivered to you contains a recitation in brief of my activities in the case, giving days and dates, etc. I started in September 1943.

Q. At the time that you started in that employment in 1943, you were informed of the provisions of the document dated November 20, 1940?

A. Well, I have a reasonably good memory that I knew something about it—that they had a contract, and for ten per cent, and that I didn't think it was enough, I remember that.

Q. Do you recall whether you personally told Lee Arenas that you didn't think it was enough before you started in on your employment?

A. I didn't do that.

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Q. I have in mind the document dated February 1, 1945 was after you had performed substantial portions of your services?

A. You are right. I don't think I had any personal talk with Lee Arenas or that I informed him of anything.

Q. Whatever information he had came through others?

A. Yes; that's right.

Q. You were not present when the documents dated February 1, 1945 were signed? A. I was not.

(Mr. Brett: Mr. Clark, who prepared the documents dated November 20, 1940, the ultimate documents?

Mr. Clark: I think I did.

Mr. Brett: The one presented to Judge McCormick?

Mr. Clark: No, I think some changes were made by Dave and then a Mr. Collett, after the signing of the one we had prepared.

Mr. Brett: You don't know, definitely, Mr. Clark, of your own knowledge, who prepared the document dated November 20, 1940?

Mr. Clark: In the form as signed by Judge McCormick, no.

Mr. Brett: Mr. Clark, who prepared the documents which are identical except as to the names of the clients, the documents dated February 1, 1945?

Mr. Clark: I did.)

Q. Now, Judge Preston, did you ever, either orally or in writing, submit either of these contracts or agreements dated November 20, 1940 or February 1, 1945, respectively, to any representative of the Federal Government? A. I did not.

(Petitioner's Exhibit No. 4)

Q. Did you orally, or in writing, submit any statement, voucher, or other form of claim, to any representative of the Federal Government? As a claim for either repayment of expenses or payment of fees?

A. I have made no claim to the Government asking either for expenses or for compensation.

Q. Is there any written document existent of which you have knowledge and in which you participated as a party or under which you claimed to have been employed and to have performed services for Lee Arenas, other than the document dated November 20, 1940 and the two documents dated February 1, 1945?

A. I know of none other.

Q. You have submitted to me, I take it in view of what you have said, a two-page communication dated January 2, 1948, which is headed "Statement of Account, etc." and which contains a number of entries indicating dates, the general character of the expenditures or receipts, in two columns, the lefthand of which apparently is a matter of receipts, and the righthand a matter of disbursements—is that an accurate statement and record of your book account?

A. It is supposed to be a correct transcript of my records.

Q. Does it constitute all of the monies received and expended by you in connection with this particular litigation?

A. Yes.

Q. And from whom did you receive the various receipts?

A. The amounts I received were usually, and I think almost entirely, from Mr. Sallee direct, with the possible exception of one item. I think the item dated June 15,

(Petitioner's Exhibit No. 4)

1946, for printing brief on appeal, \$86.20, was paid to me direct by Mrs. Arenas when she appeared in this office [J.W.P.]

~~decision~~, accompanied by three or four other Indians, and I gathered the impression that the other Indians had contributed certain portions of that sum. Other than that, all receipts were from Mr. Sallee, as I recall it.

Q. Incidentally, I note that I inadvertently erred in describing the document. Your disbursements appear in the lefthand column, and your receipts in the righthand. You referred to the item of June 17 rather than June 14—the printing of the brief on appeal?

A. That's right.

Q. And without going into further detail, each and every item as set forth as an expenditure is the actual amount you spent in connection with this case?

A. Yes.

Q. And was necessary in the performance of your duties in prosecuting the case? A. Yes.

Q. May it be stipulated that a copy of this statement may be made an exhibit?

A. Yes, exhibit to my statement.

Q. Had you ever suggested to Mr. Arenas, Judge Preston, that he seek independent advice before he modified his contract of November 20, 1940 and prior to the time when he signed the documents dated February 1, 1945?

A. I had no direct communication with Mr. Arenas on that.

(Petitioner's Exhibit No. 4)

Q. You had talked to him on other matters in the case, because you tried the case before that date, didn't you?

A. I was at Mr. Arenas' house in Palm Springs once, and I examined Mr. Arenas as a witness at the time of the trial. I had a few talks with him in the corridor of the court room, and I don't remember ever talking to him any other time.

Q. I assume you talked to him before you put him on the stand?

A. That's my custom to talk to a witness first, but I swear I don't remember talking to him.

Q. I wasn't present at the trial. Judge Preston, you have had broad experience both on the bench and as an attorney—now, having in mind Mr. Sallee's previous statements and Mr. Clark's previous statements as to what they told Mr. Arenas, is it your opinion that Mr. Arenas was sufficiently informed of English and sufficiently educated to understand and comprehend the information and advice which he was being given?

A. I certainly think he was competent at that time to transact business—as competent as the ordinary individual of the White Race. He showed on the witness stand intelligence that was very noticeable—he was commended by the Judge as being an intelligent witness—and if you will recall, the contract is simply a quantum meruit to be fixed by the court. It doesn't require a great deal of advice to make such a contract, and I think also it is valid under the law.

(Petitioner's Exhibit No. 4)

Q. Did you ever, at any time, discuss with Mr. Arenas, in connection with either of these documents, the one dated November 20, 1940, and the one dated February 1, 1945, the references therein made to the documents being subject to actions by the Federal Government through the Department of the Interior or Office of Indian Affairs?

A. No, not on either of them, at any time.

Q. These are the only two agreements you are relying on?

A. Yes.

Q. And you had no written communications with any Government official in connection with either your employment or the payment of your fees or any of the details in connection with your services?

A. I very early got hold of the Barnett decision, and my course of conduct was guided by that decision.

Q. That's all, Judge. Thank you.

JOHN W. PRESTON

Case No. 1321 O'C. Arenas vs. U. S. Petr's Exhibit No. 4. Date 2/10/48. No. 4 in evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk.

[Endorsed]: Filed Feb. 10, 1948. Edmund L. Smith, Clerk.

[PETITIONER'S EXHIBIT NO. 4A]

JOHN W. PRESTON

OLIVER O. CLARK

DAVID D. SALLEE

712 Rowan Building

458 South Spring Street

Los Angeles 13, California

MAadison 2567

Attorneys for Plaintiff

In the District Court of the United States, Southern District of California, Central Division.

Lee Arenas, Plaintiff, vs. United States of America, Defendant. No. 1321 O'C—Civil.

STATEMENT OF FACTS

Preliminary Work

Petitioners Clark and Sallee did the preliminary work looking to filing of the Complaint and in fact handled the litigation from July 1940 until September 1943. Prior to the filing of the action and during the months of July, August, September and October, 1940, these counsels spent approximately 40 days in the study of the voluminous records and other data available, including, of course, the legal questions involved in the contemplated suit. At least 4 trips were made to Palm Springs in connection with the matter and 3 visits to the bedside of Mr. Sloan, an attorney who had handled much Indian litigation and was the leading counsel in the so-called St. Marie case. During this period the following events had occurred: About July 1938 eighteen of these Palm Springs Indians, a majority of the twenty-four Indians who had received

(Petitioner's Exhibit No. 4A)

allotments under the 1927 proceedings, began an action in this Court entitled, "St. Marie et al vs. United States," which had for its object the identical relief Lee Arenas has secured in the present action. On the 23rd day of July, 1938 this Court, the Honorable Leon R. Yankwich presiding, denied in toto the claims of these eighteen Indians (24 Sup. 237). An appeal was taken to the Circuit Court of Appeals, Ninth Circuit, where on the third day of January, 1940 this judgment was affirmed (108 Fed. 2d 876). Certiorari was sought from the Supreme Court. This was denied on October 4, 1940. This Petition, however, did not settle the legal questions, because it was denied on the ground that it had been filed one day too late. This was the situation that confronted counsel for Lee Arenas on December 24, 1940 when this action was begun. The United States was a determined adversary during the pendency of the St. Marie case and continued to be such throughout the pendency of this cause, and still is a determined and persistent adversary.

Chronology of the Present Action

This action was instituted by Lee Arenas on the 24th day of December, 1940. The United States was made defendant pursuant to the Act of August 15, 1894 (25 U. S. C. A. Sec. 345), which said statute authorized any person of Indian blood who claimed an allotment under any Act of Congress to have the validity of his claim declared by a judgment of the District Court.

The Agua Caliente or Palm Springs Band of Mission Indians claimed their rights to allotments by virtue of the acts and proceedings taken by a duly appointed Alloting Agent, who first made a series of allotments to each

(Petitioner's Exhibit No. 4A)

Indian of the Tribe on June 21, 1923, and later made a reallocation to a part of them only on May 9, 1927.

This action was taken pursuant to the provisions of the Act of June 12, 1891, (26 Stat. 712-14) amended by the Act of June 25, 1910, (36 Stat. 855-863) and the Act of March 2, 1917 (39 Stat. 976). The 1923 allotment proceedings included all of the Band of fifty Indians. These proceedings were nullified because allotments were not made at the special instance and request of the individual Indians.

The proceedings in 1927 were taken pursuant to the written request of twenty-four Indians of the said Tribe. Lee Arenas and Guadalupe Arenas, his wife, were included in both the 1923 and the 1927 allotment proceedings. Francisco Arenas, father of Lee Arenas, died October 4, 1924, and Lee's brother Simon, died February 18, 1925. The deceased Indians were named in both the 1923 and the 1927 allotment proceedings. Because of their death prior to May 9, 1927, their allotments were adjudged invalid. Guadalupe Arenas was also dead at the time this action was begun, but she was alive on May 9, 1927.

Perilous Course of the Present Cause

The action was instituted December 24, 1940. A first and second amended complaint was filed in the action in the year 1941, the latter being a document of seventy-two paragraphs, forty-eight printed pages, filed October 27, 1941. Motions to dismiss or, in the alternative (two in number) summary judgments were made by the United States supported by two affidavits and a certificate of the acting Commissioner of Indian Affairs. The motions

(Petitioner's Exhibit No. 4A)

were heard on the 26th day of January, 1942, and Summary judgment was granted on March 6, 1942.

In preparation of the three complaints and the resisting of these motions Messrs. Clark and Sallee performed much research and made many court appearances. The time spent by these two counsel is estimated at four days in Court and five days in office research and preparation of documents.

On June 3, 1942 an appeal taken from the summary judgment entered on March 6, 1942, on which a record was prepared consisting of 69 pages, became action No. 10219 of the records of the Circuit Court of Appeals, Ninth Circuit.

An Opening Brief of 45 pages with an appendix of 6 pages was prepared and filed on December 16, 1942. The United States responded with a brief consisting solely of a reliance upon decision in the St. Marie cases above referred to (*supra* p. 2) Appellant replied with a brief of 7 pages.

The cause was orally argued March 8, 1942. The judgment of the Court below was affirmed by opinion and judgment filed June 30, 1943. (See 137 F. 2d 199.) Appellant duly filed on July 23, 1943 his Petition for a rehearing consisting of 3 pages which Petition was denied on August 4, 1943. Messrs. Clark and Sallee consumed approximately 10 days in office preparation of the appeal and one day in oral argument before the Circuit Court of Appeals.

On September 7, 1943 John W. Preston became one of the counsel of record for Lee Arenas. A transcript of record was then prepared to accompany a petition to the

(Petitioner's Exhibit No. 4A)

Supreme Court for certiorari, consisting of 78 pages. The whole subject of allotments was then reexamined in the office of John W. Preston, both by him and other members of his staff, during which approximately 15 days were spent in research. The result of said labor was the Petition for Certiorari which was filed October 29, 1943. This document, including a short appendix, covered 23 pages. The United States filed a brief of 9 pages in opposition to this Petition. The Petition was granted on the 20th day of December, 1943 by the Supreme Court. On February 25, 1944, counsel for Arenas prepared and filed a supplemental brief consisting of 25 pages, which was a careful examination of the statutes and decisions upon the subject of Indian allotments.

In the preparation of the Petition for Certiorari and the Supplemental Brief, John W. Preston and the members of his staff consumed approximately 15 days.

On March the 6th and 7th, 1944 Messrs. Preston and Clark attended a hearing of the cause before the Supreme Court in Washington, D. C., and on said days argued said cause before said Court. They also spent one day in searching records in the General Land Office and in the office of the Solicitor of the Department of the Interior.

On May 22, 1944, the Supreme Court of the United States rendered its opinion and judgment reversing the judgment below and remanded the cause for a trial on merits (322 U. S. 419, 64 S. Ct. 1090, 88 L. Ed. 1363).

(Petitioner's Exhibit No. 4A)

On the 27th day of June, 1944, Mandate duly issued to the District Court of the United States for the Southern District of California and it was spread on the records of said District Court on the 12th day of September 1944. During the period from September 1943 to September 1944, Petitioners Clark and Sallee estimated their time at legal work, including travel time to Washington, D. C. and Palm Springs at approximately 50 days.

Thereupon, Petitioners prepared a Third Amended Complaint in the action to conform to the rulings of the Supreme Court. The same was duly filed on the 9th day of January, 1945, and consisted of 22 printed pages and four causes of action. On the 15th day of January, 1945, the United States filed its Answer to said complaint which consisted of three defenses to each count of the complaint and covered 16 printed pages.

In a restudy of the cause following the reversal of the judgment and in the preparation of the Third Amended Complaint all counsel utilized approximately 20 days of office work.

Elaborate preparation for trial of the cause preceded January 9, 1945. This preparation included further examination of the law and the securing of witnesses particularly the last witness, Harry E. Wadsworth, the Alloting Agent then a man of more than eighty years of age.

(Petitioner's Exhibit No. 4A)

On January 9, 1945, the trial Judge made an order on pretrial and a supplemental order on January 15, 1945. Under these pre-trial orders counsel for the respective parties spent approximately five days in the consideration of matters that could be stipulated to. 27 different items of fact and exhibits that could be introduced in evidence were stipulated and on January 15, 1945 we represented to the Court that further stipulations would be made and the supplemental order resulted.

Under the supplemental order the parties agreed upon some 30 additional items and reported same to the Court on January 30, 1945.

The cause was tried in 2 days, January 30th and 31st, 1945.

In addition to the matter admitted in evidence under the pre-trial orders, there was received 49 exhibits styled Court exhibits and exhibits "A" to "F", inclusive, were accepted for the defendant. The exhibit styled "F" was a document containing a discussion of the Mission Indian problems from 1891 to date and it had as a sub-exhibit, 107 pieces of writing. This exhibit contains 300 pages of the record, Vol. 2, pp. 300 to 603. Only four witnesses gave oral testimony. When the evidence was concluded the trial judge made the following observation:

"I will make first some remarks. I am inclined to say I have never had a better presented case from the standpoint of the facts, particularly, because you at-

(Petitioner's Exhibit No. 4A)

torneys on both sides very sensibly got together and agreed on these exhibits, which has saved the Court a great deal of time. Very commendable. It shows the efficacy of the pre-trial, of which there was some little hesitancy about receiving on the part of the older practitioners, and I might say myself, a hesitancy to accept any innovations in trial work when we have been long years accustomed to one procedure. I think counsel on both sides will see that it had worked out very well in this case."

Proposed findings of fact and conclusions of law and judgment were prepared by petitioners and over 35 printed pages in the record. They were accepted by the trial court as drafted and without change. This work consumed approximately 5 days.

The United States on the 9th day of June, 1945, lodged with the Court a written motion to vacate the judgment, also the conclusions of law and to amend in numerous particulars the findings of fact and conclusions of law.

The motion was resisted by petitioners who made an oral argument against the motion. The Court submitted the motion on June 11, 1945, and denied the same by order made on July 10, 1945.

Thereafter, and on the 8th day of August, 1945, the United States filed its Notice of Appeal from the whole of the Judgment. A transcript consisting of 608 printed pages was prepared by Counsel for the United States, with

(Petitioner's Exhibit No. 4A)

the aid of petitioners. Elaborate briefs were prepared and filed by both appellant and appellee. Appellee's Reply Brief consisted of 39 printed pages.

The cause came on for hearing in the Circuit Court of Appeals at San Francisco on the 27th day of August, 1946, when two counsel for Appellee appeared and argued the cause.

On December 12, 1946, the Circuit Court of Appeals affirmed the judgment in part and reversed it in part. The net result was that plaintiff's right to the allotments selected by him and his wife, Guadalupe Arenas, were validated and the claims for the allotments in the name of Francisco Arenas and Simon Arenas were declared invalid.

Appellee, being dissatisfied with the decision respecting the allotments claimed in the name of Francisco Arenas and Simon Arenas, prepared and on January 12, 1947 filed a Petition for Rehearing. The same was denied January 14, 1947.

Petitioners thereupon prepared a record as the basis for an application for Certiorari to the Supreme Court of the United States, which consisted of 676 printed pages. A Petition for Certiorari, consisting of 32 printed pages was prepared and filed within the time allowed by law. But the Supreme Court denied the same by order dated June 9, 1947. During the period from January 9, 1945, until the conclusion of the case, Oliver O. Clark estimates his time at 27½ days. David D. Sallee estimates his

(Petitioner's Exhibit No. 4A)

time at 10 days. John W. Preston estimates his time at 40 days. This period covers the second trial of the action, the defending of the judgment in the Circuit Court of Appeals and the preparation of the Petition for Certiorari to the Supreme Court of the United States. The Judgment in said cause contained the following provision:

“The Court hereby retains jurisdiction over this action and the subject matter thereof for the purpose of adjudicating the reasonable sums that shall be allowed and paid to the attorneys of record for plaintiff for their services rendered to him in the action and for expenses necessarily incurred by them in his behalf in the prosecution thereof, and for the purpose of making all necessary and proper orders, judgments and decrees for the securing and payment of all such sums so found due and owing by the plaintiff to said attorneys.”

The litigation having terminated the petitioners filed with the Trial Court their Petition for a Supplemental Decree fixing attorneys' fees and for means of collecting same.

The value of the lands recovered for Lee Arenas is considerably in excess of One Million Dollars (\$1,000,000.00).

Case No. 1321 O'C. Arenas vs. U. S. Petr's Exhibit 4A. Date 2/10/48. 4A in evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk.

[PETITIONER'S EXHIBIT NO. 6]

AGREEMENT

This Agreement made and entered into this 20th day of November, 1940, by and between Lee Arenas, a duly enrolled member of the Tribe of Indians known as the Agua Caliente (Palm Springs) Band of Mission Indians of California, Party of the First Part, and David D. Sallee, attorney at law, residing at Los Angeles, California, Party of the Second Part,

Witnesseth:

That the Party of the First Part hereby contracts with, retains and employs the Party of the Second Part as attorney in the matters hereinafter mentioned, subject to the approval of the Commissioner of Indian Affairs, and the Secretary of the Interior, pursuant to Section 2103 of the Revised Statutes of the United States of America.

It shall be the duty of said attorney to advise and represent the said Lee Arenas in connection with property investigating and formulating any claim, or claims, either in law or in equity, that he may have by virtue of being a member of said Tribe as aforesaid, and by reason of the fact that he by inheritance has certain claims to certain properties hereinafter set forth, by virtue of the so-called Allotment Act of the Agua Caliente Band of Mission Indians residing in or about the vicinity of Palm Springs, in the County of Riverside, in the State of California, and in the United States of America, which said Act is known and designated as the Act of Congress of February 8, 1887 (24 Stat. L. 388) as amended by the Act of June 25, 1910 (36 Stat. L. 855), and Supplemented by the Act of March 2nd, 1917 (39 Stat. L. 969-76) which said Act provided among other things for the selec-

(Petitioner's Exhibit No. 6)

tion of allotments to Indians of the United States of America, and especially pertaining to the allotment selections of the said Agua Caliente (Palm Springs) Indian Reservation Tribe of Indians in California; and that said allotments or selections are hereinafter set forth, as follows to-wit:

Lot No. 46, Section 14, Twp. 4 S., Range 4 East, S. B. B. & M., Riverside County, State of California, containing two (2) acres;

Tract No. 39, Section 26, Twp. 4 South, Range 4 East, S. B. B. & M., Riverside County, State of California, containing five (5) acres;

The East $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 26, Twp. 4 South, Range 4 East, S. B. B. & M., Riverside County, State of California, containing forty (40) acres;

Lot 28, Sec. 14, Twp. 4 S., Range 4 E., S. B. B. & M., Riverside County, State of California, containing two (2) acres;

Tract No. 42, Sec. 26, Twp. 4 South, Range 4 E., S. B. B. & M., Riverside County, State of California, containing five (5) acres;

SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 26, Twp. 4 South, Range 4 East, S. B. B. & M., Riverside County, State of California, containing forty (40) acres;

Lot 47, Sec. 14, Twp. 4 South, Range 4 E., S. B. B. & M., Riverside County, State of California, containing two (2) acres;

(Petitioner's Exhibit No. 6)

Tract No. 40, Sec. 26, Twp. 4 S., Range 4 E., S. B. B. & M., Riverside County, State of California, containing five (5) acres;

SE $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 26, Twp. 4 South, Range 4 East, S. B. B. & M., Riverside County, State of California, containing forty (40) acres;

Lot 43, Sec. 14, Twp. 4 South, Range 4 East, S. B. B. & M., Riverside County, State of California, containing two (2) acres;

Tract 37, Sec. 2, Twp. 5 South, Range 4 E., S. B. B. & M., Riverside County, State of California, containing five (5) acres;

SE $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 26, Twp. 4 S., Range 4 E., S. B. B. & M., Riverside County, State of California, containing forty (40) acres,

which said allotments were certified on or about the 21st day of June, 1923, by H. L. Wadsworth, Special Allotting Agent.

It shall be the duty of said attorney to advise the said Party of the First Part, and to represent him before all courts, departments, tribunals, and other officers and commissions having any duty to perform in connection with the investigation, consideration, or final settlement of his said claims, and any and all matters that may be necessary in the opinion of the said attorney at law, Party of the Second Part, and in the final settlement of any and all claims and matters pertaining to said allotment to said Party of the First Part, or to any of the ancestors of the said Party of the First Part, and any relative either by law or by marriage that might become the property of

(Petitioner's Exhibit No. 6)

the said Party of the First Part by inheritance, or otherwise.

That said Party of the Second Part, attorney at law as aforesaid, in the performance of his duties as required of him under this contract, shall be subject to the reasonable supervision and direction of the Commissioner of Indian Affairs, and the Secretary of the Interior, and the said attorney at law shall not make any compromise, settlement or other adjustment of the matters in controversy unless with the approval of either or both of said officers; and it is also understood and agreed that the said attorney at law, and his associates if any, shall pursue the litigation in question to and through the Court of final resort, unless authorized by the Secretary of the Interior to terminate the proceedings at an intermediate stage thereof;

It Is Agreed that the said attorney is hereby authorized to associate with him in said work hereunder such assistants, including attorneys, as he may select, provided that the Government of the United States shall not be liable for any expenses; however, it is understood and agreed by the said Party of the First Part that he is to advance from time to time to said attorney such reasonable and necessary expenses which said Party of the Second Part, or his associates, may deem necessary for the proper conduct of any litigation or appearances before any Commission or body of the United States to further said litigation or compromise thereof for the benefit of the said Party of the First Part, which said expenses which may be advanced are to be borne by the said Party of the First Part; however, the Party of the Second Part is to furnish proper vouchers for each and every item of expense that may be incurred.

(Petitioner's Exhibit No. 6)

It Is Further Understood that in consideration of the services to be rendered under the terms of this contract, the Party of the Second Part shall receive an aggregate fee of ten per centum (10%) of the amount of the reasonable value of the property hereinabove set forth, or such part thereof as the Party of the First Part may become entitled to by reason of said litigation or proceedings. Said ten per centum compensation shall be upon the basis of the reasonable market value of the said property as of the date of the completion of said litigation, but in no event shall be less than the value as of the date of the signing of this agreement.

It Is Further Understood that in event the Party of the Second Part, or his associates who are actually associated in the litigation and investigation as aforesaid, shall advance any necessary expenses, they shall be reimbursed by the Party of the First Part, from the property recovered, such actual expenses as are strictly necessary or proper in connection with the printing of briefs, court costs for proceedings and other similar matters, and to include such actual and necessary traveling expenses, clerical hire, stenographic expense, and the like as may be properly required for the prosecution of said case, or cases; provided that all such expenditures shall be itemized and verified by the Party of the Second Part, and shall be accompanied by proper vouchers, and shall be paid only upon the approval of the Secretary of the Interior, or an officer designated by him who shall certify the same.

(Petitioner's Exhibit No. 6)

It Is Further Understood and Agreed by and between the parties to this Agreement, that in event of a misunderstanding as regards the manner in which the compensation to the Party of the Second Part from the Party of the First Part shall be paid; and Trust Patents or receipts have been issued, and in that event the Party of the First Part shall thereupon make application for a removal of restrictions upon sufficient of the premises to be sold, and from the proceeds of said sale or sales to pay said Party of the Second Part; that in event it is not for the best interests of the parties hereto to sell said land, the removal of restrictions shall be applied for upon properties coming to the First Party, as selected by said Second Party, upon the basis of one-tenth of the property—that is to say, Second Party shall select one property that does not exceed ten per cent. of the total value of all properties, and that First Party shall select nine properties that do not exceed ninety per cent. of the total value of said properties, and continue to make such selections until all property shall have been selected. That the property selected by the Second Party shall then be deeded to said Second Party, subject to the approval of the Secretary of the Interior and the Commissioner of Indian Affairs.

It Is Further Agreed that this contract shall continue for a period of five (5) years beginning with the date of the signing thereof, or until the completion of said litigation.

(Petitioner's Exhibit No. 6)

And it is further understood and agreed that no assignment of this contract, or any interest therein, shall be made without the consent previously obtained from the Commissioner of Indian Affairs, and the Secretary of the Interior, and that such assignment if made must comply with Section 2106 of the Revised Statutes of the United States.

This contract shall run to and be binding upon the heirs, executors, administrators, and assigns of the parties hereto.

In Witness Whereof we have hereunto set our hands and seals this 20th day of November, 1940, in the City of Los Angeles, State of California.

Lee Arenas
Lee Arenas
Party of the First Part
David D. Sallee
David D. Sallee, Atty.
Party of the Second Part.

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

.....,19 .

The foregoing contract is hereby approved in accordance with the provisions of section 2103 of the United States Revised Statutes.

.....
Commissioner

(Petitioner's Exhibit No. 6)

DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

.....,19 .

The foregoing contract is hereby approved in accordance with the provisions of Section 2103 of the United States Revised Statutes.

.....
Secretary

I, Paul J. McCormick, a Judge of the District Court for the Southern District of California, a Court of Record, do hereby certify, pursuant to Section 2103 of the Revised Statutes of the United States, that David D. Sallee, Attorney at law, of Los Angeles, California, Party of the second part to the above written and hereto attached contract, in his own proper person and in my presence at Los Angeles, on the 20th day of November, 1940, entered into, signed and executed in quadruplicate the said contract above written and hereto attached, and that he executed the same in his own behalf and of his own free act and deed; and that as then stated to me that said Lee Arenas of the Agua Caliente Tribe of Indians is the party interested on the one side, and that the said attorney at law of Los Angeles is the party interested on the other.

In Witness Whereof, I have hereunto signed my name as Judge of the said Court.

(Seal)

Paul J. McCormick
(Judge)

(Petitioner's Exhibit No. 6)

District Court of the
Southern District
of the State of California—ss.

I, R. S. Zimmerman, Clerk of the Court in said District, do hereby certify that Hon. Paul J. McCormick, whose genuine signature is subscribed to the annexed writing, was, at the time of signing the same, Judge of said Court, duly commissioned and qualified.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said Court at the City of Los Angeles, on the 20 day of November, 1940.

(Seal of the District Court).

(Seal)

R. S. Zimmerman

Clerk of the District Court for the Southern
District of the State of California.

I, Paul J. McCormick, the Judge of the U. S. District Court for the Southern District of California, Central Division, a Court of Record, pursuant to Section 2103 of the Revised Statutes of the United States, do hereby certify that Lee Arenas, in his own proper person, and in my presence, at Los Angeles, in the State of California, on the 20th day of November, 1940, entered into, signed and executed in quadruplicate, for and in behalf of himself (an Indian of the Agua Caliente Band of Mission Indians) the contract above written and attached hereto; that, as then stated to me, the said Lee Arenas is the party interested on the one side, and the attorney, David D. Sallee, on the other.

In Witness Whereof, I have hereunto signed my name as Judge of the said Court.

(Seal)

Paul J. McCormick

(Judge)

(Petitioner's Exhibit No. 6)

District Court for the
Southern District of
the State of California—ss.

I, R. S. Zimmerman, Clerk of the Court in said District, do hereby certify that Hon. Paul J. McCormick whose genuine signature is subscribed to the annexed writing, was, at the time of the signing the same, Judge of said Court, duly commissioned and qualified.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said Court at the City of Los Angeles on the 20 day of November, 1940.

(Seal of the District Court).

(Seal)

R. S. Zimmerman

Clerk of the District Court for the Southern
District of the State of California.

[Stamped] Office of Indian Affairs Received Jan. 14
1941 2520.

Case No. 1321 O'C. Arenas vs. U. S. Petr's Exhibit
No. 6. Date 2/10/48. No. 6 in evidence. Clerk, U. S.
District Court, Sou. Dist. of Calif. Louis J. Somers,
Deputy Clerk.

[PLAINTIFF'S EXHIBIT NO. 6A]

12046

5-378

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

Washington, February 6, 1948

I, James W. Hutchison, Acting, Commissioner of Indian Affairs, do hereby certify that the paper hereunto attached is a true copy of the original as the same appears of record in this Office.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed on the day and year first above written.

(Seal)

J. W. Hutchison
Acting Commissioner.

Land Division

Claims

50045-42

4843-41

J T R

CHICAGO, ILLINOIS.

Jun 3 1943

David D. Sallee, Esq.,

Attorney at Law,

806 Garfield Building,

Los Angeles, California.

(Petitioner's Exhibit No. 6A)

My dear Mr. Sallee:

The attorneys' contract between you and Lee Arenas of the Palm Springs Indian Reservation, California, has not heretofore received administrative sanction for reasons which may be briefly outlined thus:

(1) Sections 2103-2106 of the Revised Statutes (now Sections 81-84, Title 25 U. S. C.) pursuant to which the purported contract is drawn are inapplicable to contracts between individual Indians and attorneys employed by them in their individual capacity. Rather the sections mentioned deal primarily with tribal contracts affecting tribal matters and pursuant to which attorneys retained by an Indian tribe, under proper authorization from the tribal authorities, must have such contracts executed before a judge of a court of record. Contracts with individual Indians require no such formality. See the Act of June 30, 1913 (38 Stat. 97; Title 25 U. S. C. Section 85).

(2) The manifest purpose of the contract between you and Mr. Arenas is to compel recognition by the United States Government, including the Secretary of the Interior and the Commissioner of Indian Affairs, of the alleged right of Lee Arenas and other members of his family to the allotment of certain lands within the Palm Springs Indian Reservation, described in detail on pages 2 and 3 of the contract at hand. As we view it, the legal right of the Indians at Palm Springs Indian Reservation to compel recognition of their claim to right of allotment in severalty has previously been adjudicated by the courts and decided against the contention of these Indians: See the case of Genevieve P. St. Marie, et al v. United States

(Petitioner's Exhibit No. 6A)

(24 Fed. Sup. 237; affirmed 108 Fed. 2d 876; certiorari denied by the Supreme Court on October 14, 1940). The legal issues involved having thus been definitely determined and disposed of by the courts, it is not seen wherein any good purpose would now be served by encouraging other individual members of this band to indulge in fruitless and apparently hopeless litigation. This does not mean to imply of course that this Office would decline to consider or approve a proper contract under appropriate circumstances, if correctly drawn and executed.

(3) As to the contract at hand, ordinarily we do not favorably consider such contracts between Indians and their attorneys, involving civil actions at least, unless the fee or compensation to be allowed the attorneys for services rendered is on what we term a combination "contingent fee and quantum meruit basis." That is, and briefly, no recovery, no fee and in the event of recovery the fee allowed is to be determined on a quantum meruit basis by the Commissioner of Indian Affairs or the Secretary of the Interior. Pages 5, 6, and 7 of the contract between you and Mr. Arenas imply that your fee and necessary expenses are to be paid "from the property recovered," but as to the fee itself (page 5) that is fixed at 10 per cent of the amount of the reasonable value of certain property previously described in the contract. That description covers four town lots of two acres each in Section 14; four tracts of five acres each and four tracts of 40 acres each in Section 26, Township 4 South, Range 4 East.

While a fee of 10 per cent in itself is ordinarily not regarded as excessive yet we do know that much of the property at Palm Springs is quite valuable, particularly

(Petitioner's Exhibit No. 6A)

the town lots in Section 14 and hence we would not feel disposed to consider favorably a contract contemplating a flat fee even of 10 per cent where the property rights involved may run into high figures.

These are but additional comments or suggestions as to the form and substance of the contract at hand, but in view of the fundamental objection under number 2 above, possibly any further comment at this time would be superfluous.

In connection with the subject matter generally; i. e. contracts between individual Indians and attorneys employed by them, you appreciate that the Indians as citizens have the same right as other citizens to negotiate valid and binding contracts with third parties, including attorneys, without approval by this Office or the Department provided the obligations incurred or to be incurred under such contracts do not affect tribal or other property rights subject to control or supervision by this Department. In other words, unless payment for services rendered is to be had out of restricted funds or other assets belonging to the Indians, approval of such contracts by this Department is not required, as a matter of law.

Sincerely yours,

(Seal)

(Signed) Walter V. Woehike

Assistant to the Commissioner

MLM

5-MS-29

cc to Mission Agency

Case No. 1321. Arenas vs. U. S. Petitioner's Exhibit No. 6A Date 2/10/48. No. 6A in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk.

[PETITIONER'S EXHIBIT NO. 7]

POWER OF ATTORNEY AND CONTRACT

Know All Men By These Presents: That I, Lee Arenas, an enrolled Indian and member of the Palm Springs, or Agua Caliente, Indian Reservation, Riverside County, and State of California, have constituted, appointed and made, and by these presents do make, constitute and appoint David D. Sallee, John W. Preston and Oliver O. Clark, Esq., of Los Angeles, California, my true and lawful Attorneys, for me and in my name, place and stead to do all things lawful, proper and right in my behalf as a member of said tribe and reservation, and particularly to look after and protect my rights, and the rights of the members of my family, in respect to all rights, including our allotments which I have selected as the head of the family for myself and my children, and to protect us in the use and occupancy of the same and doing all things necessary in our behalf. That full power and authority is hereby granted to David D. Sallee, John W. Preston and Oliver O. Clark, to appear before any and all the Departments of the United States in my behalf, or any of the Courts to which it may be necessary to apply; and to also defend our interests in any Courts or tribunals. I hereby agreeing to pay my said Attorneys upon a quantum meruit basis for services rendered, and to advance or reimburse any and all expenses incurred in my behalf or in behalf of any and all members of my family. All to be subject to the rules and regulations of the Department of the Interior.

I, Hereby Giving and Granting to My Said Attorneys full power of substitution and assistance to perform every act and transaction necessary to be done in our behalf the same as I might or could do if personally present; I hereby

(Petitioner's Exhibit No. 7)

ratifying and confirming all that my said Attorneys, assistants or substitutes may lawfully do, or cause to be done in our behalf. This contract is irrevocable except upon proper, fair and just termination of the same, particularly payment of costs, expenses and fees earned.

In Witness Whereof I have hereunto set my hand this 1st day of February, A. D., 1945.

Lee Arenas

The State of California,
County of Riverside—ss.

Be it known that on this 1st day of February, 1945, before me, the undersigned Notary Public in and for said County and State, personally appeared the above named maker of this contract and power of attorney, and to me known to be the identical person, and who acknowledged the execution thereof to be his free act and deed for the purposes in said above contract and power of attorney set forth.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal the day and year in the above certificate set forth.

(Seal)

Benton Beckley

Notary Public in and for the County of Riverside,
State of California

My Commission Expires June 9, 1947.

Case No. 1321 O'C Civil. Arenas vs. U. S. Petitioner's Exhibit No. 7. Date 2/10/48. No. 7 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk.

[PETITIONER'S EXHIBIT NO. 8]

POWER OF ATTORNEY AND CONTRACT

Know All Men By These Presents: That I, Marian Therese Arenas, an enrolled Indian and member of the Palm Springs, or Agua Caliente, Indian Reservation, Riverside County, and State of California, have constituted, appointed and made, and by these presents do make, constitute and appoint David D. Sallee, John W. Preston and Oliver O. Clark, Esq., of Los Angeles, California, my true and lawful Attorneys, for me and in my name, place and stead to do all things lawful, proper and right in my behalf as a member of said tribe and reservation, and particularly to look after and protect my rights, and the rights of the members of my family, in respect to all rights, including our allotments which I have selected as the head of the family for myself and my children, and to protect us in the use and occupancy of the same and doing all things necessary in our behalf. That full power and authority is hereby granted to David D. Sallee, John W. Preston and Oliver O. Clark, to appear before any and all the Departments of the United States in my behalf, or any of the Courts to which it may be necessary to apply; and to also defend our interests in any Courts or tribunals. I hereby agreeing to pay my said Attorneys upon a quantum meruit basis for services rendered, and to advance or reimburse any and all expenses incurred in my behalf or in behalf of any and all members of my family. All to be subject to the rules and regulations of the Department of the Interior.

I, Hereby Giving and Granting to My Said Attorneys full power of substitution and assistance to perform every act and transaction necessary to be done in our behalf the same as I might or could do if personally present; I here-

(Petitioner's Exhibit No. 8)

by ratifying and confirming all that my said Attorneys, assistants or substitutes may lawfully do, or cause to be done in our behalf. This contract is irrevocable except upon proper, fair and just termination of the same, particularly payment of costs, expenses and fees earned.

In Witness Whereof I have hereunto set my hand this 1st day of February, A. D., 1945.

Marian Therese Arenas

The State of California,
County of Riverside—ss.

Be it known that on this 1st day of February, 1945, before me, the undersigned Notary Public in and for said County and State, personally appeared the above named maker of this contract and power of attorney, and to me known to be the identical person, and who acknowledged the execution thereof to be his free act and deed for the purposes in said above contract and power of attorney set forth.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal the day and year in the above certificate set forth.

(Seal)

Benton Beckley

Notary Public in and for the County of Riverside,
State of California

My Commission Expires June 9, 1947.

Case No. 1321. Arenas vs. U. S. Petitioner's Exhibit No. 8. Date 2/10/48. No. 8 Identification. Date 2/20/48. No. 8 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk.

[PETITIONER'S EXHIBIT NO. 14]

* * * * *

[Crest]

AMERICAN RIGHT OF WAY AND APPRAISAL
CONTRACTORS

JOS. A. GALLAGHER & SONS

J. A. Gallagher, Sr.,
President 1337 Edgecliffe Drive
J. A. Gallagher, Jr.,
Vice-President Los Angeles 26, California
Telephone NOrmandie 1-3017
R. A. Martin,
Secretary

December 9, 1947

John Preston, Oliver Clarke and David Sallee
Attorneys at Law
c/o David Sallee
Garfield Building
Los Angeles, California

Re: Appraisal of Portions of
Sections 14 and 26, Agua
Caliente Reservation,
Palms Springs, California

Gentlemen:

Pursuant to your request and authorization thereof under date of November 4, 1947, for appraisal of 94 acres, more or less, (4 acres in Section 14 and 90 acres in Section 26, Township 4 South, Range 4 East, Agua Caliente Indian Reservation, Riverside County, California), which said appraisal is made for the purpose of determining attorney's fees to be charged for legal work performed cov-

(Petitioner's Exhibit No. 14)

ering the above referred to acreage, I have made a careful investigation and analysis of subject property for the purpose of estimating its fair market value as of current date.

As the result of this study, I am of the opinion that the fair market value of the property under appraisal as of this date is:

One Million Forty-seven Thousand Dollars
(\$1,047,000.00).

I have appraised subject property as a whole and I have accepted as being accurate the plat of survey which was used in arriving at the fair market value—which said plat was prepared by J. F. Davidson, Civil Engineer, Riverside, California; also, Exhibit Map #109—showing portion of Agua Caliente Reservation and approved allotments.

You will find here following some descriptive and factual data upon which this conclusion is partially predicated.

Also, be advised that I am prepared to testify in court in this matter.

Joseph A. Gallagher, Sr.

Joseph A. Gallagher, Sr.

President, American Right of Way and Appraisal
Contractors

* * * * *

Case No. 1321 O'C. Arenas vs. U. S. Petitioner's Exhibit No. 14. Date 2/11/48. No. 14 in Evidence. Clerk, U. S. District Court, Dist. of Calif. Louis J. Somers, Deputy Clerk.

[PETITIONER'S EXHIBIT NO. 20]

JOHN W. PRESTON
OLIVER O. CLARK
DAVID D. SALLEE
712 Rowan Building
458 South Spring Street
Los Angeles 13, California
MAdison 2567

Petitioners and Attorneys for Plaintiff

In the District Court of the United States, Southern
District of California, Central Division

Lee Arenas, Plaintiff, vs. United States of America,
Defendant. No. 1321 O'C—Civil

Under the powers of attorney granted by the group of
Indians at Palm Springs to John W. Preston, Oliver O.
Clark and David D. Sallee, complaints were prepared in
1945, but not filed, for the following:

Lena Jessica Lugo Welmas	Nicholosa Sol
Florida Patencio	Frank Segundo
John J. Patencio	Clemente Segundo
Albert Patencio	Willie Marcus Belardo
Matilda Patencio Welmas Saubel	

On April 24, 1945, the following actions were filed:

No. 4401—Carrie Pierce Casero
“ 4402—LaVerne Miguel Milanovich
“ 4403—Lucy Pete
“ 4404—Annie Pierce
“ 4405—Ramalda Taylor

(Petitioner's Exhibit No. 20)

On February 9, 1945, the following actions were filed:

No. 4235—Viola Hatchitt

No. 4236—Juana Hatchitt

On January 9, 1947, action No. 6221-PH in re Eleuteria Brown Arenas was filed, and is now pending.

On February 16, 1948, an action was filed in the District Court of the United States for the District of Columbia, against Julius A. Krug, Secretary of the Interior of the United States, on behalf of the following named Palm Springs Indians:

Ramalda Lugo, aka Ramalda Lugo Taylor

Carrie Pierce Casero Annie Pierce

Juana Saturnino Hatchitt Viola Juanita Hatchitt

Lena Jessica Lugo, aka Lorene L. Welmas

LaVerne Milanovich, aka LaVerne Virginia Miguel

Elizabeth Pete Anthony (Andreas) Joseph

Joe Patentio, aka John J. Patentio

Florida Patentio, aka Flora Patentio

Santo Albert Patentio

Clemente Segundo, aka C. P. Segundo

Francis Segundo, aka Francisco Segundo

Matilda Patentio, aka Matilda T. Saubel

Case No. 1321 O'C. Arenas vs. U. S. Petitioner's Exhibit No. 20. Date 3/8/48. No. 20 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk.

[RESPONDENT'S EXHIBIT I]

* * * * *

Member	BERNARD G. EVANS	
American	Realtor - Appraiser	Telephone
Institute of	138 E. Highland Avenue	7857
Real Estate	San Bernardino, California	
Appraisers		

Lands Division, Dept. of Justice February 7, 1948
 808 Federal Building
 Los Angeles, California

Attention: Mr. Irl Brett, Special Assistant
 to the Attorney General

Gentlemen:

Re: Arenas vs. U. S. A.
 Case No. 1321 - WM

Persuant to your authorization and request I have made an appraisal of the Arenas properties in the City of Palm Springs, the legal descriptions of which were furnished by your office.

In my opinion the fair market value of the fee title of the properties is the sum of Two Hundred Eleven Thousand Five Hundred Dollars (\$211,500.00).

The complete report on these properties is enclosed herewith and further information is contained in the volume of supplementary data made a part hereto.

Very truly yours,
 B. G. Evans
 Bernard G. Evans, M.A.I.

BGE:s

* * * * *

Case No. 1321 O'C. Arenas vs. U. S. Respondent's Exhibit I. Date 2/20/48. No. 1 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk.

[RESPONDENT'S EXHIBIT L]

Law Offices

DAVID D. SALLEE

806 Garfield Building

Los Angeles 14, Cal.

TRinity 6225

December 28, 1943

Mr. and Mrs. Lee Arenas
Palm Springs, California

Re: Lee Arenas vs. U. S. of America

Dear Mr. and Mrs. Arenas:

I did not want to take the time last night to talk to you on the telephone on long distance for two reasons; one that it was running up in unnecessary costs and second, a machine was waiting for me and I did not have the time.

Yesterday I received a telegram from Washington, D. C. from the Clerk of the United States Supreme Court requesting that an additional \$35.00 be immediately forwarded to said clerk to cover certain costs in the above entitled case. There is now due a balance of \$85.00 I have not been repaid for myself that I have sent to Washington. I have repeatedly requested that you send me in some money for the last two or three months, and it has been almost impossible to get anything out of you. You knew on November 12th when I was in Palm Springs that there was a balance of \$50.00 due me and you have neglected to send it to me. You say you have other bills, all right, if you won't protect your property you won't have anything to pay other bills, nor anything for yourself. This litigation comes first in everything. I am trying to save your property for you, and it is worth well

(Respondent's Exhibit L)

a quarter million dollars. I am just getting tired of having to continually argue with you over these costs.

This is the first win and it is an important win for you in your fight. The United States Supreme Court does not grant these writs unless there is real merit in the case, and I am as confident of winning this case as I am that I will be alive tomorrow. Marian you have acted very sulky and I don't like it. You folks spend money right and left, but you have got to change and spend some money to help win this fight. Of course if you don't want your property and want to be put in a gulch and have only \$25 or \$30 a month to live on, all well and good, because that is where you will end up at if you don't use real business sense and cooperate with me. Lee I want you to read this letter thoroughly and I want you to send in this \$85.00 because I need it.

I have got some more briefs to file in Washington before our hearing which will come up some time in March or April I presume, and I want a long talk with you relative to certain other matters within the next ten days. I would like to have you come to Los Angeles the first part of next week.

With kindest personal regards to yourself and wishing you a Happy New Year and awaiting your immediate response to this letter I remain

Yours truly,

David D. Sallee

DAVID D. SALLEE

Case No. 1321 O'C. Arenas vs. U. S. Respondent's Exhibit L. Date 2/20/48. No. L in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk.

[RESPONDENT'S EXHIBIT N]

Law Offices
 DAVID D. SALLEE
 806 Garfield Building
 Los Angeles 14, Cal.
 TRinity 6225

September 24, 1943

Mr. and Mrs. Lee Arenas
 Palm Springs
 California

Dear Lee and Marion:

I just O. K.'d the final draft of the Petition for Certiorari in Lee's case this morning. It is now in the printer's hands and will be filed this coming week. We have associated with us on this, one of the leading lawyers in the West, a man who used to be on the Supreme Court of the State of California, and he is *an* enthusiastic as we are that the ultimate outcome should be in our favor. I don't know what the printing bill will be, as we have to print a good many of these because the requirement of the Supreme Court is heavy; so call me up in the next day or two and I will give you some more information.

Trusting you are both in the best of health, I remain,

Yours truly,

David D. Sallee
 DAVID D. SALLEE

DDS-w

[Written]: Marian Do you have any peaches left

Case No. 1321 O'C. Arenas vs. U. S. Respondent's Exhibit N. Date 3/29/48. No. N in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Louis J. Somers, Deputy Clerk.

[Endorsed]: No. 12046. United States Court of Appeals for the Ninth Circuit. Lee Arenas, Appellant, vs. John W. Preston, Oliver O. Clark and David D. Sallee, Appellees. United States of America and Lee Arenas, Appellants vs. John W. Preston, Oliver O. Clark and David D. Sallee, Appellees. Supplemental Transcript of Record. Appeals From the United States District Court for the Southern District of California, Central Division.

Filed January 4, 1949.

PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No.

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER EXTENDING TIME FOR FILING THE
RECORD AND DOCKETING THE APPEAL
IN THE ABOVE ENTITLED ACTION

Upon reading and filing the foregoing affidavit and stipulation,

It is Hereby Ordered that the appellant, Lee Arenas, be and he hereby is granted to and including October 1, 1948, in which to prepare and file the record and docket the appeal in the above entitled action and that he be allowed to file his bond on appeal in the sum of \$250 at any time not less than five (5) days before the filing of such record and the docketing of such appeal in this Court.

Dated: August 13, 1948.

(Seal)

WILLIAM DENMAN

Circuit Judge

A True Copy. Attest: Aug. 13, 1948. Paul P. O'Brien,
Clerk.

[Endorsed]: Filed Aug. 13, 1948. Paul P. O'Brien,
Clerk.

[Title of United States Court of Appeals and Cause]

ORDER EXTENDING THE TIME FOR FILING
THE RECORD ON APPEAL AND DOCKET-
ING THE APPEAL IN THE ABOVE EN-
TITLED ACTION

Upon reading and filing the application of Appellants Lee Arenas and United States of America, the affidavit of Irl D. Brett, Esq., and the stipulation of Appellees, John W. Preston, Oliver O. Clark and David D. Sallee,

It Is Hereby Ordered that Appellants, Lee Arenas and United States of America, be and each of them hereby is granted to and including September 15, 1948 in which to prepare and file the record and docket the appeal in the above entitled action, heretofore filed by them on June 30, 1948, from that certain Judgment made and entered by the United States District Court for the Southern District of California, Central Division, in Case No. 1321-O'C Civil, on May 3, 1948 in favor of John W. Preston, Oliver O. Clark and David D. Sallee, and against Lee Arenas and United States of America, which said Judgment was entered in C. O. Book 50 at page 488 in the Office of the Clerk of said District Court.

Dated: August 23d, 1948.

(Seal)

WILLIAM DENMAN

Judge

A True Copy. Attest: Aug. 25, 1948. Paul P. O'Brien, Clerk; by Frank H. Schmid, Deputy Clerk.

[Endorsed]: Filed Aug. 23, 1948. Paul P. O'Brien, Clerk.

[Title of United States Court of Appeals and Cause]

ORDER EXTENDING THE TIME FOR FILING
THE RECORD ON APPEAL AND DOCKET-
ING THE APPEAL IN THE ABOVE EN-
TITLED ACTION

Upon reading and filing the application of appellants Lee Arenas and United States of America and the affidavit of Irl D. Brett, Esq.,

It Is Hereby Ordered that appellants Lee Arenas and United States of America be and each of them hereby is, granted to and including October 1, 1948, in which to prepare and file the record and docket the appeal in the above entitled action, heretofore filed by them on June 30, 1948, from that certain Judgment made and entered by the United States District Court for the Southern District of California, Central Division, in case No. 1321-O'C Civil, on May 3, 1948, in favor of John W. Preston, Oliver O. Clark and David D. Sallee, and against Lee Arenas and United States of America, which said Judgment was entered in Civil Order Book 50 at page 488, in the office of the Clerk of said District Court.

Dated: September 10, 1948.

(Seal)

ALBERT LEE STEPHENS

Circuit Judge

A True Copy. Attest: Sep. 15, 1948. Paul P. O'Brien,
Clerk.

[Endorsed]: Filed Sep. 15, 1948. Paul P. O'Brien,
Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit
No. 12046

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER EXTENDING TIME FOR FILING THE
RECORD AND DOCKETING THE APPEAL
IN THE ABOVE ENTITLED ACTION

Upon reading and filing the foregoing affidavit,

It Is Hereby Ordered that the appellant, Lee Arenas, be and he hereby is granted to and including the 1st day of November, 1948, in which to prepare and file the record and docket the appeal in the above entitled action and that he be allowed to file his bond on appeal in the sum of \$250.00 at any time not less than five (5) days before the filing of such record and the docketing of such appeal in this Court.

Dated: September 30, 1948.

CLIFTON MATHEWS

Circuit Judge

[Endorsed]: Filed Sep. 30, 1948. Paul P. O'Brien,
Clerk.

[Title of United States Court of Appeals and Cause]

STATEMENTS OF POINTS AND DESIGNATION
OF PORTIONS OF RECORD TO BE PRINTED

Lee Arenas and the United States of America, appellants in the above-entitled case, adopt the statement of points filed in the District Court as the statement of points to be relied upon in this Court, and desire that the whole of the record as filed and certified be printed in its entirety.

Respectfully submitted,

J. EDWARD WILLIAMS

Acting Assistant Attorney General

ROGER P. MARQUIS

JOHN C. HARRINGTON

Attorneys, Department of Justice,
Washington, D. C.

[Endorsed]: Filed Oct. 1, 1948. Paul P. O'Brien,
Clerk.

[Title of United States Court of Appeals and Cause]

ORDER FOR ENLARGING TIME FOR FILING
RECORD ON APPEAL

Good cause appearing therefor and upon reading the affidavit of John M. Ennis, who has been retained as one of the attorneys for appellants Lee Arenas and United States of America, It Is Hereby Ordered that Lee Arenas and United States of America be granted an enlargement of time for filing record on appeal to and including the 15th day of November, 1948. Affiant fails to show appellant has ordered the transcript of the hearing below.

WILLIAM DENMAN

Judge of the United States Court of Appeals

[Endorsed]: Filed Nov. 1, 1948. Paul P. O'Brien,
Clerk.



[Title of United States Court of Appeals and Cause]

ORDER FIXING AND ALLOWING ATTORNEY'S
FEES AND NECESSARY EXPENDITURES
AND IMPRESSING LIEN UPON LAND OF
LEE ARENAS AS SECURITY THEREFOR,
AND ORDER SUBSTITUTING ATTORNEYS
FOR LEE ARENAS

Pursuant to the stipulation filed herein by Lee Arenas and John J. Taheny, and good cause appearing, the court hereby fixes the sum of \$4,550.00 as the reasonable value of the legal services rendered by the said John J. Taheny in behalf of said Lee Arenas in this court and in the

United States District Court in connection with the controversy which is now the subject of appeal in this court, which sum has not been paid; and further fixes the sum of \$410.98 as the unpaid balance owing by said Lee Arenas to the said John J. Taheny by reason of reasonable sums necessarily expended by the said John J. Taheny at the request of and in behalf of said Lee Arenas in the conduct of said litigation;

And it further appearing that the said Lee Arenas has stipulated that he will deliver to said John J. Taheny the note of himself and his wife, Marian Arenas, in the sum of \$4,960.98 to evidence said indebtedness;

And it appearing to the court that it is proper that security be required for the payment of said indebtedness as a condition to the granting of the motion of said Lee Arenas for substitution of attorneys;

Now, Therefore, It Is Hereby Ordered that a lien be and the same is hereby allowed and awarded to the said John J. Taheny as security for the payment of said indebtedness in the amount of \$4,960.98 for attorney's fees and necessary expenditures, which lien is hereby impressed upon the interest of the said Lee Arenas in and to the following lands located in the County of Riverside, State of California, described as follows, to-wit:

Parcel (a) Homesite: Lot 46, Section 14, Township 4 South, Range 4 East, S. B. B. & M., comprising two (2) acres;

Parcel (b) Irrigated: Tract No. 39, Section 26, Township 4 South, Range 4 East, S. B. B. & M., comprising five (5) acres;

Parcel (c) Homesite: Lot 47, Section 14, Township 4 South, Range 4 East, S. B. B. & M., comprising two (2) acres;

Parcel (d) Irrigated: Tract No. 40, Section 26, Township 4 South, Range 4 East, S. B. B. & M., comprising five (5) acres;

Parcel (e) Desert: Southeast $\frac{1}{4}$ of Northwest $\frac{1}{4}$ of Northwest $\frac{1}{4}$ of Section 26, Township 4 South, Range 4 East, S. B. B. & M., comprising of ten (10) acres;

Parcel (f) Desert: Southwest $\frac{1}{4}$ of Northeast $\frac{1}{4}$ of Northwest $\frac{1}{4}$ of Section 26, Township 4 South, Range 4 East, S. B. B. & M., comprising of ten (10) acres;

Parcel (g) Desert: East $\frac{1}{2}$ of Southwest $\frac{1}{4}$ of Northwest $\frac{1}{4}$ of Section 26, Township 4 South, Range 4 East, S. B. B. & M., comprising twenty (20) acres;

Parcel (h) Desert: Southeast $\frac{1}{4}$ of Northwest $\frac{1}{4}$ of Section 26, Township 4 South, Range 4 East, S. B. B. & M., comprising forty (40) acres.

It Is Further Ordered that John M. Ennis, Esq., and Clifton Hildebrand, Esq., be and they are hereby substituted as attorneys for Lee Arenas in the place and stead of John J. Taheny, Esq.

Dated this 15th day of December, 1948.

WILLIAM DENMAN
WILLIAM HEALY

Judges of the U. S. Court of Appeals for the
Ninth Circuit

Approved as to Form: Lee Arenas, John M. Ennis and Clifton Hildebrand, by Clifton Hildebrand, Attorneys for Lee Arenas. John J. Taheny, In Propria Persona.

[Endorsed]: Filed Dec. 15, 1948. Paul P. O'Brien, Clerk.

[Title of United States Court of Appeals and Cause]

STATEMENT OF POINTS ON WHICH APPELLANT LEE ARENAS WILL RELY IN THIS APPEAL

Appellant Lee Arenas appeals from the judgment of the trial court for the following reasons:

1. That the weight of evidence does not support the trial court's finding that attorneys' contract between Lee Arenas and David D. Sallee entered into on the 20th day of November, 1940 had been rescinded; that the trial court erred in failing to limit the fees awarded to all counsel to a total of ten (10%) per cent.

2. That even if such contract had been rescinded, and did not fix such limit the evidence does not support the trial court's finding that petitioner John W. Preston was entitled to a fee of twelve and one-half (12½%) per cent of the value of the lands in question. That the finding of the trial court in such regard fixed an excessive fee.

CLIFTON HILDEBRAND &
JOHN M. ENNIS

By Clifton Hildebrand

[Endorsed]: Filed Jan. 31, 1949. Paul P. O'Brien,
Clerk.